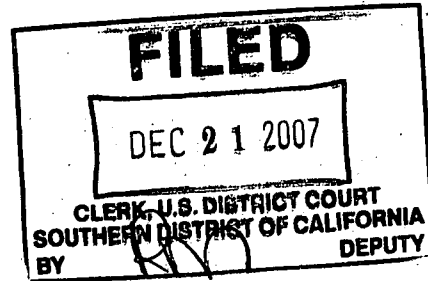


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Attorneys for Defendants LOWLIFE CORPORATION LIMITED, EBTM plc; and DALE  
MASTERS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

'07 CV 2405 L CAB

REALLY LIKEABLE PEOPLE, INC., a  
Delaware corporation, LOSERKIDS, INC., a  
California Corporation, MACBETH, INC., a  
California corporation, MACBETH OPTICS,  
LP, a California limited partnership, and  
REALLY LIKEABLE PEOPLE II, INC.  
(formerly ATTICUS CLOTHING, INC.), a  
California corporation,

Plaintiffs,

vs.

LOWLIFE CORPORATION, LTD, an English  
limited company, EBTM plc, an English  
corporation, DALE MASTERS, an individual,  
and DOES 1 through 25, inclusive,

Defendants.

CASE NO.

NOTICE OF REMOVAL OF CIVIL  
ACTION BASED ON FEDERAL  
DIVERSITY JURISDICTION (28 U.S.C.  
§§ 1332, 1441(B))

///

///

///

NOTICE OF REMOVAL OF CIVIL ACTION BASED ON FEDERAL DIVERSITY JURISDICTION (28  
U.S.C. §§ 1332, 1441(b))

1 **TO: THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES, AND ALL**  
 2 **ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that LOWLIFE CORPORATION LIMITED (incorrectly  
 4 sued as LOWLIFE CORPORATION, LTD); EBTM plc (incorrectly sued as EVERYTHING  
 5 BUT THE MUSIC, plc); and DALE MASTERS, Defendants in the above-entitled action,  
 6 hereby remove the state court action described below to this court, based upon federal diversity  
 7 jurisdiction.

### 8 **I. INTRODUCTION**

9 1. This case is hereby removed, from state court, where Plaintiffs filed it and it is  
 10 currently pending, to federal court. This case may be removed to federal court because this  
 11 court has original jurisdiction under 28 U.S.C. § 1332, and the action is one which may be  
 12 removed to this court by Defendants pursuant to the provisions of 28 U.S.C. § 1441(b).

### 13 **II. THE STATE COURT ACTION**

14 2. On or about November 13, 2007, Plaintiffs filed a Complaint alleging causes of  
 15 action for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing,  
 16 Fraud, Rescission, Misappropriation of Trade Secrets, Breach of Fiduciary Duty, Aiding and  
 17 Abetting Breach of Fiduciary Duty, Intentional Interference with Contract, Unfair  
 18 Competition, and Violation of Business & Professions Code § 17200, et seq., in the Superior  
 19 Court of the State of California, County of San Diego, entitled REALLY LIKEABLE  
 20 PEOPLE, INC., et al. v. LOWLIFE CORPORATION, LTD, et al., Case Number 37-2007-  
 21 00081582-CU-BC-CTL. Each Defendant was served with the Summons and Complaint  
 22 sometime between December 7 and December 11, 2007. Defendants filed an Answer in said  
 23 case on December 21, 2007. Copies of the Summons, Complaint, Civil Case Cover Sheet,  
 24 Notice of Case Assignment, Notice of Case Reassignment, and Answer from the state court  
 25 action are attached as Exhibit 1. See 28 U.S.C. § 1446(a).

### 26 **III. BASES FOR JURISDICTION**

27 3. The state court action is a civil action over which this court has original  
 28 jurisdiction under 28 U.S.C. §§ 1332 because it is a civil action between citizens of a state and

1 citizens or subjects of a foreign state and the matter in controversy exceeds the sum or value of  
2 \$75,000, exclusive of interest and costs. As alleged in the complaint, and upon information  
3 and belief, each Plaintiff was and continues to be a citizen of either the State of California or  
4 the State of Delaware. (Compl., ¶¶ 1-4.) Defendant EBTM plc is an English corporation,  
5 Defendant LOWLIFE CORPORATION LIMITED, is an English limited company, and Dale  
6 Masters is an Australian citizen and a resident of Great Britain. As such, there is complete  
7 diversity of citizenship between the Plaintiffs and Defendants. In addition, as alleged in the  
8 complaint, the matter in controversy exceeds \$75,000. (*See, e.g.*, Compl., ¶ 41.)

9 4. The state court action is removable to this court by Defendants pursuant to the  
10 provisions of 28 U.S.C. § 1441(b) because, as explained above, no Defendant is a citizen of  
11 this state.

12 5. This removal is timely under 28 U.S.C. § 1446(b) because Defendants were not  
13 served a copy of the complaint until sometime between December 7 to December 11, 2007,  
14 and this Notice of Removal is being filed within 30 days of such service. It is timely filed and  
15 otherwise satisfies the procedural requirements of 28 U.S.C. § 1446.

16 Therefore, Defendants remove the state court action to this court because this court has  
17 subject matter jurisdiction pursuant to 28 U.S.C. § 1332 and the action is removable pursuant  
18 to 28 U.S.C. § 1441(b). Immediately after filing this Notice of Removal, Defendants will file a  
19 copy of this Notice of Removal with the Clerk of the Court, Superior Court of California,  
20 County of San Diego in accordance with 28 U.S.C. § 1446(d).

21  
22 Dated: December 21, 2007

SELTZER CAPLAN McMAHON VITEK,  
A Law Corporation

23  
24 By: 

Gerald L. McMahon

Monty A. McIntyre

G. Scott Williams

25 Attorneys for Defendants LOWLIFE  
26 CORPORATION LIMITED; EBTM, plc; and  
27 DALE MASTERS  
28



SUM-100

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

LOWLIFE CORPORATION, LTD, an English limited company, EVERYTHING BUT THE MUSIC, plc, an English corporation, DALE MASTERS, an individual, and DOES 1 through 25, inclusive,

## YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE): REALLY LIKEABLE PEOPLE, INC., a Delaware corporation, LOSERKIDS, INC., a California Corporation, MACBETH, INC., a California corporation, MACBETH OPTICS, LP, a California limited partnership, and REALLY LIKEABLE PEOPLE II, INC. (formerly ATTICUS CLOTHING INC.), a California corporation.

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

NOV 14 '07 PM 3:09

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, pueda perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court of California, County of San Diego  
The Hall of Justice  
330 West Broadway  
San Diego, CA 92101

CASE NUMBER:  
(Número del Caso):

37-2007-00081582-CU-BC-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
J. Warren Rissier  
Bingham McCutchen, LLP  
335 S. Grand Avenue, 44th Floor  
Los Angeles, CA 90071  
(SBN 197939) (213) 680-6400

DATE:

(Fecha)

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

## NOTICE TO THE PERSON SERVED: You are served

(SEAL)

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): EVERYTHINGBUT THE MUSIC, plc  
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):
4. ☐ by personal delivery on (date):

Form Adopted for Mandatory Use  
Judicial Council of California  
SUM-100 (Rev. January 1, 2004)

SUMMONS

Code of Civil Procedure §§ 412.20, 468  
American LegalNet, Inc.  
[www.USCourtForms.com](http://www.USCourtForms.com)

Page 1 of 1



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Attorneys for Plaintiffs Really Likeable People, Inc.,  
Loserkids, Inc., Macbeth, Inc., Macbeth Optics, LP, and  
Really Likeable People II, Inc. (formerly Atticus  
Clothing, Inc.)

FILED  
CIVIL BUSINESS OFFICE 19  
COURT DIVISION

07 NOV 13 PM 11:07

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

REALLY LIKEABLE PEOPLE, INC., a  
Delaware corporation, LOSERKIDS, INC.,  
a California Corporation, MACBETH,  
INC., a California corporation, MACBETH  
OPTICS, LP, a California limited  
partnership, and REALLY LIKEABLE  
PEOPLE II, INC. (formerly ATTICUS  
CLOTHING INC.), a California  
corporation,

Plaintiffs,

vs.

LOWLIFE CORPORATION, LTD, an  
English limited company, EVERYTHING  
BUT THE MUSIC, plc, an English  
corporation, DALE MASTERS, an  
individual, and DOES 1 through 25,  
inclusive,

Defendants.

CASE NO. 37-2007-00081582-CU-BC-CTL

COMPLAINT FOR:

(1) BREACH OF CONTRACT;  
(2) BREACH OF IMPLIED COVENANT  
OF GOOD FAITH AND FAIR DEALING  
(3) FRAUD IN THE INDUCEMENT;  
(4) RESCISSION;  
(5) MISAPPROPRIATION OF TRADE  
SECRETS;  
(6) BREACH OF FIDUCIARY DUTY;  
(7) AIDING AND ABETTING BREACH OF  
FIDUCIARY DUTY;  
(8) INTENTIONAL INTERFERENCE  
WITH CONTRACT;  
(9) UNFAIR COMPETITION; AND  
(10) VIOLATION OF BUSINESS &  
PROFESSIONS CODE § 17200, *ET SEQ.*

DEMAND FOR JURY TRIAL

Plaintiffs Really Likeable People, Inc. ("RLP"), Loserkids, Inc. ("Loserkids"),  
Macbeth, Inc. and Macbeth Optics, LP ("Macbeth"), and Really Likeable People II, Inc.  
(formerly Atticus Clothing Inc.) ("Atticus Clothing") for their Complaint against Lowlife  
Corporation, Ltd ("Lowlife"), Everything But The Music, plc ("EBTM"), Dale Masters  
("Masters") and Does 1 through 25 (collectively "Defendants") allege as follows:

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COMPLAINT



THE PARTIES

1. Plaintiff RLP is and, at all times relevant hereto, was a corporation duly organized and existing under the laws of the State of Delaware with its headquarters located in Carlsbad, California in the County of San Diego.

2. Plaintiff Loserkids is and, at all times relevant hereto, was a resident and citizen of the State of California with its headquarters located in Carlsbad, California in the County of San Diego. Loserkids is a subsidiary of RLP.

3. Plaintiff Macbeth is and, at all times relevant hereto, was a resident and citizen of the State of California with its headquarters located in Carlsbad, California in the County of San Diego. Macbeth is a subsidiary of RLP.

4. Plaintiff Atticus Clothing is and, at all times relevant hereto, was a resident and citizen of the State of California with its headquarters located in Carlsbad, California in the County of San Diego. Atticus Clothing is a subsidiary of RLP. Plaintiffs RLP, Loserkids, Macbeth and Atticus Clothing are hereinafter collectively referred to as "RLP" or "Plaintiffs."

5. RLP is informed and believes and on that basis alleges that Defendant Lowlife is and, at all times relevant hereto, was a limited company organized under the laws of the United Kingdom ("UK") with its principal place of business in London, England, which has regularly transacted business in the county of San Diego and who negotiated and entered into the relevant contracts in Carlsbad, California in the County of San Diego. Lowlife has described itself as "engaged in the business of manufacturing and distributing branded soft goods, including but not limited to casual clothing, headgear, footwear and other accessories bearing the Atticus, Macbeth, Loserkids and Lowlife brands."

6. RLP is informed and believes and on that basis alleges that Defendant EBTM is and, at all times relevant hereto, was an English corporation with its principal place of business in the UK, and who reviewed and approved of the relevant contracts between Lowlife and RLP which provide, as detailed below, that California law applies. RLP is informed and believes and on that basis alleges that on or about May 31, 2007, EBTM acquired Lowlife.

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1 EBTM describes itself as an online retailer "specializing in music inspired fashion including  
2 clothing, footwear, jewelry and accessories." EBTM's website, EBTM.com, advertises as doing  
3 business in the United States, Europe and the UK, providing conversions for prices in the US  
4 dollar, Euro and Pound, respectively.

5 7. RLP is informed and believes and on that basis alleges that Defendant  
6 Masters is and, at all times relevant hereto, was an individual who resides in the UK. RLP is  
7 informed and believes and on that basis alleges that Masters was and is the managing director of  
8 Lowlife. RLP is informed and believes and on that basis alleges that commencing on or about  
9 June 6, 2007, Masters became a member of the Board of Directors of EBTM.

10 8. RLP is informed and believes and on that basis alleges that Defendant  
11 Masters was the sole owner of Lowlife commencing on or about May 2006 until the time that he  
12 sold Lowlife to EBTM. RLP is informed and believes and on that basis alleges that, in  
13 connection with the sale, Masters became the largest single shareholder of EBTM.

14 9. RLP is informed and believes and on that basis alleges that there exists  
15 and at all times herein mentioned there existed, a unity of interest and ownership between  
16 Defendant Masters and Defendant Lowlife, as described above, such that any individuality and  
17 separateness between Masters and Lowlife have ceased and Lowlife is the alter ego of Masters in  
18 that Masters dominated Lowlife as its sole owner and managing director.

19 10. RLP is informed and believes and on that basis alleges that adherence to  
20 the fiction of a separate existence of the Defendant Lowlife as an entity distinct from Defendant  
21 Masters would permit an abuse of the corporate privilege and would sanction a fraud and  
22 promote injustice.

23 11. Plaintiffs do not know the true names and capacities, whether individual,  
24 corporate, associate, or otherwise, of the defendants that Plaintiff sues in this Complaint as  
25 DOES 1 through 25, inclusive (collectively, the "Doe Defendants"), and, therefore, sues the Doe  
26 Defendants by these fictitious names. Plaintiffs will amend this Complaint to allege the true  
27 names and capacities of the Doe Defendants when Plaintiffs ascertain the true names of the Doe  
28 Defendants. Plaintiffs are informed and believe, and thereon allege, that the Doe Defendants,

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1 and each of them, are responsible in some manner for the acts and omissions that Plaintiffs allege  
2 in this Complaint and that the conduct of the Doe Defendants, and each of them, proximately  
3 caused Plaintiffs' damages as alleged in this Complaint.

4 12. Plaintiffs are informed and believe and on that basis allege that all of the  
5 acts set forth in this Complaint alleged to have been done by each Defendant were, where  
6 applicable, authorized, approved, or ratified by each of the other Defendants. Plaintiffs are  
7 informed and believe and based thereon allege that each of the Defendants is the agent, servant,  
8 employee, partner, associate, joint venturer, co-participant and/or principal of the remaining  
9 Defendants, and that, where applicable, each Defendant has been, at all material times, acting  
10 within the scope of such relationship and with the full knowledge, consent, authority, ratification,  
11 and/or permission of the remaining Defendants.

#### 12 GENERAL ALLEGATIONS

13 13. RLP is a locally based company which owns and licenses rights to  
14 distribute youth-oriented, music-inspired clothing brands Macbeth and Loserkids and, until the  
15 brand was sold to Lowlife in July 2007, Atticus. RLP markets its products, which include  
16 clothing, shoes and sunglasses, to consumers with music interests.

17 14. RLP was founded by Jon Humphrey and two members of the San Diego-  
18 born band Blink-182, including current RLP owner Tom DeLonge. Blink-182 achieved huge  
19 commercial success. Indeed, its album *Enema of the State* sold over 12 million copies  
20 worldwide. In 2005, Blink-182 disbanded and Tom DeLonge formed a new band, Angels &  
21 Airwaves. Angels & Airwaves released their debut album *We Don't Need to Whisper* in May  
22 2006, where it debuted at number 4 on the Billboard 200. In November 2007, Angels &  
23 Airwaves released their album *I-Empire* where it debuted at number 1 for iTunes album  
24 downloads.

25 15. Blink-182 and Angels & Airwaves have been a promotional vehicle for  
26 RLP's brands. In 1999, RLP formed the Loserkids corporation and launched its website,  
27 www.loserkids.com ("Loserkids.com"), with fulfillment services provided by ARTISTdirect.  
28 Loserkids.com was the first of its kind youth portal where youth could find music-inspired  
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1 apparel, accessories and footwear that were otherwise hard to find in the average retail venues.  
2 The Loserkids.com website features an e-tailing store where consumers can purchase clothing  
3 and merchandise sold under a number of brands, including RLP's brands and other brands, such  
4 as Adio, Volcom, DC and Hurley. The websites for both Blink-182 and Angeles & Airwaves,  
5 <http://www.blink182.com> and <http://www.angelsandairwaves.com>, respectively, link to  
6 Loserkids.com.

7 16. RLP evolved to promote a number of bands, who in turn helped promote  
8 RLP's apparel and other consumer goods brands through appearances in catalogues, stage  
9 appearances, promotional photos, and features on the Loserkids.com website. In promoting its  
10 brands, RLP historically used its personal relationships with bands to place their products with  
11 the bands, and to get the musicians to appear in RLP's marketing materials and promotions.  
12 Indeed, RLP has a recording studio on its premises, where its musician sponsors can create new  
13 music.

14 17. RLP businesses have been quite successful, in large part due to their  
15 affiliation with Tom DeLonge and his bands, the goodwill that Loserkids and Macbeth have built  
16 for their brands with individual customers, and Loserkids and Macbeth's strong relationships  
17 with their suppliers, distributors and retailers, including their reputation for promptly paying  
18 suppliers and timely shipping product to distributors and retailers.

19 18. On February 25, 2003, RLP contracted with Lowlife, for Lowlife to be  
20 RLP's distributor of Atticus products in the UK, through a February 25, 2003 Manufacturing  
21 Agreement (the "Atticus Manufacturing Agreement"). Lowlife and Masters, the co-owner and  
22 managing director of Lowlife, were new to marketing music-inspired brands. Lowlife had  
23 historically sold only belts under the Lowlife brand.

24 19. Also on February 25, 2003, RLP contracted with Lowlife, for Lowlife to  
25 be RLP's distributor of Macbeth products in the UK, through a February 25, 2003 Manufacturing  
26 and Distribution Agreement (the "Macbeth Manufacturing Agreement").

27 20. On February 21, 2006, the parties entered into Amendments No. 1,  
28 amending the original terms of the Atticus and Macbeth Manufacturing Agreements to, among  
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1 other things, provide for distribution rights to a number of additional European countries  
2 (including Italy, Germany, Austria, Norway, Sweden, Switzerland, Belgium, Netherlands,  
3 Luxembourg, Portugal, Spain and Malta).

4 21. In 2005, RLP and Lowlife entered into an arrangement to jointly operate a  
5 website at www.loserkids.uk.com ("Loserkids.uk.com"), which was intended to be a UK version  
6 of the website owned and operated by RLP at Loserkids.com in the United States. The model for  
7 Loserkids.uk.com was developed by RLP in connection with the Loserkids.com site, based on  
8 RLP's successful website promotion and fulfillment arrangements and other experience in  
9 creating and operating Loserkids.com.

10 22. In 2006, RLP began discussions with Masters and Lowlife about a  
11 possible expanded arrangement for Masters and Lowlife to distribute RLP's brands Atticus,  
12 Macbeth and Loserkids. However, RLP subsequently learned of disturbing information  
13 regarding Masters' attempt to buy out the then co-owner of Lowlife and regarding Masters'  
14 hidden expansion of Lowlife's belt business into apparel in violation of the Manufacturing  
15 Agreements. Accordingly, RLP decided that it did not want to enter into a long term  
16 arrangement with Masters, and RLP began negotiating a termination of its distributor  
17 relationships with Masters and Lowlife. During these negotiations, Masters expressed interest in  
18 acquiring the Atticus brand, and RLP expressed interest in possibly selling it to him.

19 23. On May 29, 2007, RLP and Lowlife entered into the agreements at issue.  
20 Pursuant to the ASSET PURCHASE AND SALE AGREEMENT (hereinafter "Atticus Asset  
21 Purchase Agreement"), RLP agreed to sell Atticus brand assets to Lowlife in exchange for  
22 payment of \$4.2 million. The parties also entered into "wind-down" agreements, providing for  
23 transition of the Atticus brand assets and accompanying obligations from RLP to Lowlife, for  
24 wind-down of the distribution relationships between RLP and Lowlife created by the Atticus and  
25 Macbeth Manufacturing Agreements, and for wind-down of the relationship between RLP and  
26 Lowlife with respect to operation of the Loserkids.uk.com website.

27 24. Among other things, the parties agreed that during the seven month wind-  
28 down period, from May 29, 2007 through December 31, 2007, that: (1) Lowlife would assume

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1 RLP's obligations for payment to manufacturers of Atticus product, and shipments of Atticus  
2 product pursuant to purchase orders Lowlife bought under the Atticus Asset Purchase  
3 Agreement; (2) Lowlife would continue operating and promoting the Loserkids.uk.com website  
4 and paying royalties to RLP for sales of product on the site; and (3) Lowlife would be given a  
5 license to distribute Macbeth products in the UK, Republic of Ireland, the Channel Islands, the  
6 European Union, Norway, Switzerland, Turkey, and Russia (the "Territory") and would pay  
7 royalties to RLP for sales of Macbeth product in the Territory. Consistent the past practice and  
8 the established course of dealing for the site, Atticus product was approved for sale on  
9 Loserkids.uk.com and Lowlife acquired RLP's obligations under a purchase order that provided  
10 for shipment of Fall 2007 Atticus product to be sold on Loserkids.com. At the conclusion of the  
11 wind-down period, RLP is to take over operation of the Loserkids.uk.com site and distribution of  
12 Macbeth product in the Territory.

13 25. On May 31, 2007, two days after the execution of the definitive  
14 agreements to sell the Atticus brand to Lowlife, Masters disclosed for the first time that he was  
15 not actually working with a "financing source" or obtaining loans or investment to underwrite a  
16 portion of the purchase price, as his agent had represented during the negotiations, but instead  
17 Masters had been conspiring with EBTM, a direct competitor of Loserkids in the UK, to sell the  
18 Atticus brand and Lowlife to EBTM.

19 26. On June 1, 2007, EBTM publicly announced that it had acquired Lowlife.  
20 RLP is informed and believes and on that basis alleges that, in connection with EBTM's  
21 acquisition of Lowlife, Masters became the largest single shareholder of EBTM's stock and  
22 became a member of EBTM's board of directors, and thereby assumed fiduciary duties to  
23 EBTM's stockholders. Furthermore, RLP is informed and believes and on that basis alleges that  
24 Masters entered into a "service agreement" with EBTM whereby he will receive a salary and a  
25 bonus of up to more than 60% of his salary or £62,500 equivalent to approximately US  
26 \$126,000. Thus, RLP is informed and believes and on that basis alleges that Masters is now  
27 compensated based on performance of EBTM and heavily incentivized to do what is in the best  
28

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1 interests of EBTM and EBTM.com, rather than what is in the best interests of the Macbeth brand  
2 or Loserkids.uk.com.

3 27. RLP is informed and believes and on that basis alleges that Masters and  
4 Lowlife never intended to comply with their obligations under the wind-down agreements.  
5 Instead, RLP is informed and believes and on that basis alleges that Masters and Lowlife  
6 improperly and fraudulently induced RLP to enter into agreements regarding sale of Atticus  
7 brand assets, operation and promotion of Loserkids.uk.com and distribution and promotion for  
8 Macbeth product, in order to take control of Loserkids.uk.com and Macbeth distribution in the  
9 Territory so that Lowlife, Masters and their co-conspirator, EBTM, could control the success or  
10 failure of RLP's businesses in the Territory and could misappropriate RLP's trade secrets and  
11 other valuable intellectual property.

12 28. RLP is informed and believes and on that basis alleges that, through the  
13 aforementioned agreements, Masters and Lowlife created, and sold as a package to EBTM, a  
14 virtual strangle-hold on RLP's ability to make sales, to build and preserve brand value in the  
15 Territory, and to otherwise compete on an even footing in the consumer marketplace. RLP is  
16 informed and believes and on that basis alleges that, Lowlife and Masters, conspiring with  
17 EBTM, further tried to solidify that ill-gotten control and unfairly compete in the marketplace  
18 by causing the Loserkids.uk.com site to be shut down through a fraudulent scheme built on lies  
19 and false pretences in an effort to hijack the fulfillment function for Loserkids.uk.com,  
20 transferring it to EBTM.

21 29. RLP is informed and believes and on that basis alleges that Lowlife,  
22 EBTM and Masters conspired to hobble RLP as a competitor by failing to fulfill Lowlife's  
23 contractual obligations to promote sales through the Loserkids.uk.com site and for Macbeth  
24 products in the Territory, thereby intentionally devaluing the goodwill associated with  
25 Loserkids.uk.com and Macbeth products during the period in which Lowlife and Masters (and  
26 EBTM, by virtue of its ownership of Lowlife) controlled promotion of the site and brand,  
27 respectively, in the Territory. RLP is informed and believes and on that basis alleges that  
28 Lowlife, EBTM and Masters illegally conspired to provide EBTM a seven month head-start on a  
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1 direct competitor and, through neglect and inaction as well as affirmative wrongful acts, ensured  
 2 that the value of the Loserkids.uk.com website and Macbeth brands would be severely damaged  
 3 in the Territory by the time the wind-down agreements expired by their terms on December 31,  
 4 2007. RLP is informed and believes and on that basis alleges that this was all a fraudulent and  
 5 intentional effort by Lowlife and Masters, conspiring with EBTM, to damage RLP and the value  
 6 of its brands and business.

7 30. RLP is informed and believes and on that basis alleges that, in connection  
 8 with this scheme, EBTM, assisted by Lowlife and Masters, stole RLP's proprietary trade secret  
 9 protected information, including but not limited to Loserkids.uk.com's customer lists and data so  
 10 that it could be used by EBTM.

11 31. As a result of Defendants' numerous wrongful acts, described in detail  
 12 below, Defendants have caused millions of dollars in damages to RLP.

### 13 FIRST CAUSE OF ACTION

14 (Breach of Written Contracts Against Defendant Lowlife)

15 32. Plaintiffs reallege and incorporate herein Paragraphs 1- 31 above in its  
 16 First Cause of Action.

17 33. Lowlife has breached numerous provisions of the relevant agreements as  
 18 described below.

#### 19 Atticus Wind-Down Agreement

20 34. On or about May 29, 2007, at Carlsbad, California, Plaintiff Atticus  
 21 Clothing (a subsidiary of RLP) and Defendant Lowlife entered into a written agreement entitled  
 22 ATTICUS INVENTORY, SALES ORDER AND WIND-DOWN AGREEMENT (hereinafter  
 23 "Atticus Wind-Down Agreement"). The Atticus Wind-Down Agreement generally provides for  
 24 the wind-down of the distribution relationship between Atticus Clothing and Lowlife created by  
 25 the Atticus Manufacturing Agreement, and makes certain provisions in connection with sale of  
 26 the Atticus assets from Atticus Clothing to Lowlife. The Agreement provides that it "shall be  
 27 governed by and construed in accordance with the laws of the State of California, excluding its  
 28 conflict of laws rules." See §8.6

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1           35. Plaintiff Atticus Clothing has performed in all material respects all  
2 conditions, covenants, and promises required on its part to be performed in accordance with the  
3 terms and conditions of the Atticus Wind-Down Agreement.

4           36. Defendant Lowlife, however, has breached the Atticus Wind-Down  
5 Agreement as described below.

6 ***Lowlife's Failure To Pay RLP For Fall 2007 Atticus T-shirts***

7           37. Atticus t-shirts have historically been produced by Print Plus, Inc. ("Print  
8 Plus") located in Santa Ana, California. Because Lowlife was concerned it would be unable to  
9 secure credit terms from Print Plus for production of Fall 2007 Atticus t-shirts, the parties agreed  
10 that Lowlife was to submit a purchase order to RLP for the Fall 2007 t-shirts and RLP agreed, in  
11 turn, to provide a purchase order to Print Plus guaranteeing payment to Print Plus based on  
12 RLP's good credit and past business relationship with Print Plus. Print Plus was to ship directly  
13 to Lowlife and, upon shipment, RLP was to invoice Lowlife for payment which Lowlife agreed  
14 to promptly pay.

15           38. The Atticus Wind-Down Agreement provides that Lowlife "agrees it will  
16 bear any and all costs related to the purchase of products under the purchase orders ..." and, in  
17 the event that Seller paid for the product and accompanying costs, that Lowlife "shall promptly  
18 reimburse Seller for any such expenditures." See Atticus Wind-Down Agreement § 6.3.  
19 Furthermore, Section 6.3 of the Atticus Wind-Down Agreement provides that Lowlife assumed  
20 from Atticus Clothing its obligations to pay manufacturers: "Seller hereby assigns to Buyer, and  
21 Buyer accepts from Seller, those current purchase orders for material that are attached hereto as  
22 Schedule 4." See also *id* ("Buyer agrees it will bear any and all costs related to the purchase of  
23 products under the purchase orders ....") and Schedule 4 (listing purchase orders from Print Plus  
24 as among Lowlife's obligations).

25           39. Accordingly, Lowlife submitted a purchase order to RLP and RLP  
26 submitted a purchase order to Print Plus. On various ship dates between June 25 and July 11,  
27 2007, the t-shirts were shipped from Print Plus directly to Lowlife and its distributors according  
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1 to Lowlife's instructions. On or about July 24, 2007, RLP sent an invoice to Lowlife for the  
2 amount due, \$234,000. Lowlife, however, has failed and refused to timely pay the amount due.

3 40. In order to preserve its good credit rating, maintain its supplier  
4 relationship with Print Plus and its positive reputation in the vendor community, and after  
5 waiting as long as reasonably possible to receive payment from Lowlife such that Print Plus  
6 could in turn be paid, RLP had no option but to pay Print Plus \$234,000 for the t-shirts. RLP  
7 paid Print Plus this amount on or about September 7, 2007. Lowlife, without disputing either  
8 that it owes payment to RLP in that amount nor that Lowlife received and has presumably sold  
9 the t-shirts for profit, has failed to pay the amount due despite repeated follow-up by RLP  
10 requesting payment.

11 41. As a direct and proximate result of Lowlife's breach of the agreement,  
12 RLP has been damaged in the sum of \$234,000, plus interest, among other damages.

13 *Lowlife's Failure to Pay Manufacturer (Jing Jin)*

14 42. As noted above, Section 6.3 of the Atticus Wind-Down Agreement  
15 provides that Lowlife assumed from Atticus Clothing (RLP's subsidiary) its obligations to pay  
16 manufacturers: "Seller hereby assigns to Buyer, and Buyer accepts from Seller, those current  
17 purchase orders for material that are attached hereto as Schedule 4." See also *id* ("Buyer agrees  
18 it will bear any and all costs related to the purchase of products under the purchase orders ....").

19 43. RLP is informed and believes and on that basis alleges that Lowlife, in  
20 breach of the Atticus Wind-Down Agreement, refused to timely pay Jing Jin Traveling Bags  
21 Manufacturing Ltd ("Jing Jin"), a manufacturer for Atticus Fall 2007 product whose orders were  
22 among current orders listed on Schedule 4 of the agreement. See *id* Schedule 4.

23 44. RLP is informed and believes and on that basis alleges that on or about  
24 June 21, 2007, Jing Jin invoiced Lowlife for \$14,413.63 in Atticus Fall 2007 product. On or  
25 about August 10, 2007, Jing Jin communicated directly with Lowlife for payment of the invoice  
26 and, on August 20, 2007, Lowlife promised Jing Jin that it would pay the invoice, as it was  
27 obligated to do under Section 6.3 and Schedule 4 of the Atticus Wind-Down Agreement.  
28

1 However, RLP is informed and believes and on that basis alleges that Lowlife has failed or  
2 refused to pay despite Jing Jin's repeated requests for payment and Lowlife's promise to pay.

3 45. As a direct and proximate result of Lowlife's breach of the Atticus Wind-  
4 Down Agreement, Lowlife has damaged RLP in an amount including but not limited to harm to  
5 its reputation in the manufacturer community. Indeed, on November 12, 2007, Jing Jin's counsel  
6 notified Atticus Clothing (RLP's subsidiary) and Lowlife that it would commence legal  
7 proceedings against Atticus Clothing, within 7 days, for collection of the amount due on the  
8 invoice.

9 *Lowlife's Failure To Ship Atticus Fall 2007 Product To Loserkids In The U.S.*

10 46. Because Atticus has been an anchor brand of Loserkids.com in the United  
11 States, comprising approximately 40% or more of annual sales at the time the parties entered into  
12 the Atticus Wind-Down Agreement, continuing to sell the Atticus brand on Loserkids.com,  
13 through at a minimum 2007, was important to RLP and Loserkids. Accordingly, the Atticus  
14 Wind-Down Agreement memorialized the parties' agreement for continued sale of Atticus  
15 products on Loserkids.com and provided for \$139,000 at wholesale prices (worth substantially  
16 more for sale at retail) in Atticus Fall 2007 apparel and accessories to be shipped to  
17 ARTISTdirect, the fulfillment provider for Loserkids.com orders in the United States. See  
18 Atticus Wind-Down Agreement, § 2 and Schedule 2 (listing purchase orders from  
19 ARTISTdirect).

20 47. RLP viewed continuing to sell Atticus product on Loserkids.com as a  
21 mutually beneficial arrangement for RLP and Lowlife, because most United States Atticus  
22 customers purchased Atticus product from Loserkids.com and Lowlife did not have a ready  
23 outlet to distribute those goods in the United States.

24 48. In reliance on receiving the orders for Fall 2007 Atticus product to be sold  
25 on the Loserkids.com website, RLP brought the fulfillment function for Loserkids.com in-house,  
26 hired personnel, and invested in infrastructure. In addition, RLP did not implement any plans to  
27 try to replace what had been its longstanding anchor brand on Loserkids.com with alternative  
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1 products, on the expectation that Atticus product would be available from Lowlife through the  
2 end of 2007.

3 49. Moreover, Lowlife's representative, Aron Zuccala, communicated with  
4 RLP regarding shipment of the order and confirmed that the goods would be delivered.

5 50. Lowlife, however, failed to ship any Atticus Fall 2007 product for sale on  
6 Loserkids.com, instead notifying RLP, on August 31, 2007, that it would not ship the product  
7 because, in substance, RLP is a competitor of EBTM.

8 51. As a direct and proximate result of Lowlife's failure to ship the Atticus  
9 Fall 2007 product in breach of the Atticus Wind-Down Agreement, Lowlife has damaged RLP  
10 by causing lost profits and harming the goodwill value of Loserkids.com, among other damages.

11 **Loserkids.uk.com Wind-Down Agreement**

12 52. On or about May 29, 2007, at Carlsbad, California, Plaintiff Loserkids (a  
13 subsidiary of RLP) and Defendant Lowlife entered into a written agreement entitled  
14 WWW.LOSERKIDS.UK.COM WIND-DOWN AGREEMENT (hereinafter, the  
15 "Loserkids.uk.com Wind-Down Agreement"). The Loserkids.uk.com Wind-Down Agreement  
16 generally provides for a wind-down of Loserkids and Lowlife's relationship in connection with  
17 operation of the Loserkids.uk.com site. Section 10(f) of the Agreement provides that it "shall be  
18 governed by and construed in accordance with the laws of the State of California, excluding its  
19 conflict of laws rules."

20 53. Plaintiff Loserkids has performed in all material respects all conditions,  
21 covenants, and promises required on its part to be performed in accordance with the terms and  
22 conditions of the Loserkids.uk.com Wind-Down Agreement.

23 54. Defendant Lowlife, however, has breached numerous provisions of the  
24 Loserkids.uk.com Wind-Down Agreement, as described below.

25 ***Lowlife's Failure To Pay Royalties***

26 55. Lowlife is contractually bound under Section 4(c) of the Loserkids Wind-  
27 Down Agreement to give an accounting and pay Loserkids a royalty for sale of products on the  
28 Loserkids.uk.com site thirty days after each months' end: "Lowlife shall provide to Loserkids an  
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1 accounting of the Site's financial activities within 30 days after each month's end, accompanied  
2 by payment of any amounts payable ...."

3 56. Lowlife has failed and refused to provide the accounting or royalty  
4 payment for Loserkids.uk.com for the months of July, August, or September, which were due on  
5 August 31, September 30, and October 31, 2007, respectively.

6 57. As a direct and proximate result of Lowlife's failure to provide the royalty  
7 payments as required under the Loserkids.uk.com Wind-Down Agreement, RLP has been  
8 harmed in an amount to be proven at trial.

9 *Lowlife's Failure To Ship Atticus Fall 2007 Product To Loserkids In The UK*

10 58. In the UK, Atticus was an anchor brand of the Loserkids.uk.com website,  
11 representing approximately 50% of the site's sales historically and at the time the parties entered  
12 into the Loserkids.uk.com Wind-Down Agreement. Accordingly, for substantially the same  
13 reasons as those identified above regarding the United States Loserkids.com site, continuing to  
14 sell Atticus on Loserkids.uk.com after the brand was sold to Lowlife was important to RLP and  
15 Masters represented that it was also important to he and Lowlife. Accordingly, in connection  
16 with entering into the Loserkids.uk.com Wind-Down Agreement, the parties agreed that the  
17 Loserkids.uk.com site would be operated by Lowlife in accordance with past practice and that  
18 Atticus product was expressly approved for sale on the site. See Loserkids.uk.com Wind-Down  
19 Agreement § B ("the Parties have established a course of dealing with respect to the Site and  
20 desire by this Agreement to memorialize the terms of such course of dealing ...") and 2(c)  
21 ("Loserkids shall be deemed to have irrevocably consented to and approved the sale of 'Atticus'  
22 branded products on the Site.").

23 59. Furthermore, Lowlife expressly agreed to provide "general marketing and  
24 promotion services for the Site,... ensuring that all relevant key words and other technical  
25 specifications for the Site are provided ... for the purpose of registering Loserkids.uk.com with  
26 search engines," and to use "commercially reasonable efforts to promote Loserkids.uk.com by  
27 developing agreements with other related sites to cause a hyperlink to be created from such  
28 sites." *Id.* § 2(e).

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60. In contravention of past practice and the stated intent to memorialize what had been the historic course of dealing with respect to the site, RLP is informed and believes and on that basis alleges that Lowlife did not ship or post any significant quantity of Atticus Fall 2007 product for sale on Loserkids.uk.com in the UK. Instead, Lowlife shipped Atticus Fall 2007 product to EBTM for sale on its competing website, EBTM.com.

61. On August 31, 2007, Masters (Lowlife and EBTM's agent) disclosed to Diana Crawford and Amy Arroyo of RLP (the Chief Financial Officer and Director of Legal Affairs for RLP, respectively) for the first time that Lowlife refused to sell Atticus to Loserkids because, in substance, Loserkids was a competitor of EBTM (by virtue of Lowlife's sale to EBTM on or about May 31, 2007).

62. As a direct and proximate result of Lowlife's intentional material breach of its obligations under the Loserkids.uk.com Wind-Down Agreement, Lowlife has damaged RLP by causing lost profits and harming the goodwill value of Loserkids.uk.com, among other damages.

*Lowlife's Removal of Loserkids "Shop Locator" Link from Atticus Clothing Site*

63. In further breach of the Loserkids.uk.com Wind-Down Agreement, RLP is informed and believes and on that basis alleges that rather than using commercially reasonable efforts to promote Loserkids.uk.com by developing agreements with other related sites to cause a hyperlink to be created from such sites (as the Loserkids.uk.com Wind-Down Agreement expressly requires) and in contravention of past practice, Lowlife deleted a Loserkids.uk.com hyperlink from a site it operated, Atticusclothing.com, and added a hyperlink from Atticusclothing.com to EBTM.com, violating the terms of the Loserkids.uk.com Wind-Down Agreement and intentionally diverting commercial traffic that otherwise would have gone to Loserkids.uk.com.

64. As a direct and proximate result of Lowlife's breach of the Loserkids.uk.com Wind-Down Agreement, Lowlife has damaged RLP by diverting business from Loserkids.uk.com to EBTM.com, resulting in lost profits to RLP and harm to the goodwill value of Loserkids.uk.com, among other damages.

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1 *Lowlife's Cancellation Of Orders From Third Party Manufacturers*

2 65. In contravention of past practice and in violation of its contractual  
3 obligations to promote Loserkids.uk.com, RLP is informed and believes and on that basis alleges  
4 that Lowlife cancelled some or all of the existing orders from third party manufacturers whose  
5 products had historically been sold on Loserkids.uk.com, failed to order products from third  
6 party manufacturers consistent with past practices, and/or failed to post product from such orders  
7 for sale on Loserkids.uk.com. RLP is informed and believes and on that basis alleges that those  
8 same products were and are now being ordered for and sold on EBTM.com.

9 66. As a direct and proximate result of Lowlife's breach of the  
10 Loserkids.uk.com Wind-Down Agreement, Lowlife has damaged RLP by causing lost profits  
11 and harming the goodwill value of Loserkids.uk.com, among other damages.

12 *Lowlife's Failure To Ship Macbeth Fall 2007 Product To Loserkids In The UK*

13 67. In contravention of past practice and its obligations to promote the  
14 business of Loserkids.uk.com, RLP is informed and believes and on that basis alleges that  
15 Lowlife failed to timely ship and/or post Macbeth Fall 2007 product on Loserkids.uk.com,  
16 despite that those products had been directly shipped by the Macbeth third party supplier to  
17 Lowlife on or about August 1, 2007, per Lowlife's delivery instructions. Instead, RLP is  
18 informed and believes and on that basis alleges that Lowlife failed to post Macbeth Fall 2007  
19 product for sale on Loserkids.uk.com—despite repeated requests by RLP—until in or about the  
20 week of September 10, 2007, after most of the critical 2007 back-to-school sales season had  
21 ended.

22 68. Moreover, RLP is informed and believes and on that basis alleges that  
23 even after it did belatedly post Macbeth Fall 2007 product for sale, Lowlife did so only in very  
24 limited quantities. For example, as of September 21, 2007, the Macbeth Fall 2007 Manchester  
25 shoe was only available in two sizes—six and eleven—with nothing in between, omitting  
26 entirely the range of sizes that would account for the vast majority of sales, despite the fact that  
27 the full range of sizes had been shipped to Lowlife by RLP.



69. Additionally, RLP is informed and believes and on that basis alleges that the full inventory of Macbeth product shipped by RLP to Lowlife still has not been delivered to the product distribution provider for Loserkids.uk.com, specifically Trinity Street Direct Limited ("Trinity Street"), as described in detail below. RLP is informed and believes and on that basis alleges that approximately 60% of the original order for Macbeth product has not yet been sent by Lowlife to Trinity Street.

70. As a direct and proximate result of Lowlife's intentional breach of the Loserkids.uk.com Wind-Down Agreement, Lowlife has damaged RLP by causing lost profits and harming the goodwill value of the Macbeth brand and Loserkids.uk.com, among other damages.

*Lowlife's Shut Down Of Loserkids.uk.com And Fraudulent Scheme To Divert Business To EBTM*

71. The Loserkids.uk.com Wind-Down Agreement further provides that "[c]onsistent with past practice, Trinity Street Direct Limited ... will be utilized for all hosting and product distribution services for the Site." Loserkids.uk.com Wind-Down Agreement, § 2(a). Under the Agreement, any change in the host or product distribution provider could only be made with the approval of Loserkids, whose consent was not to be unreasonably withheld, conditioned or delayed: "Loserkids will not materially change such terms and conditions without the prior written consent of Lowlife, which consent shall not be unreasonably withheld, conditioned or delayed." *Id.*

72. RLP is informed and believes and on that basis alleges that Lowlife conspired with EBTM to intentionally and fraudulently implement a scheme intended to take over fulfillment services from Trinity Street and transfer those functions to EBTM (a direct competitor of Loserkids.uk.com) in a clear breach of the Wind-Down Agreement.

73. RLP is informed and believes and on that basis alleges that, on or about June 6, 2007 (within days of EBTM publicly announcing it had acquired Lowlife) Masters and Richard Breeden, the Chief Executive Officer of EBTM ("Breeden"), met with Andy Murray ("Murray"), the CEO of Trinity Street's parent, Trinity Universal Holdings, Ltd, and told him

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1 that all services previously performed by Trinity Street for www.loserkids.uk.com would be run  
2 by EBTM rather than Trinity Street. RLP is informed and believes and on that basis alleges that  
3 Masters, Breeden and Murray further discussed logistics for transition of the business from  
4 Trinity Street to EBTM, including EBTM's planned launch date of July 1, 2007, and for all stock  
5 in Trinity Street's possession for the www.loserkids.uk.com store to be sent to EBTM by July  
6 15, 2007. No consent to any such change was requested by Lowlife nor given by Loserkids or  
7 RLP.

8 74. RLP is informed and believes and on that basis alleges that, on or about  
9 July 12, 2007, Murray, Masters and Breedan further communicated about the timing of  
10 terminating Trinity Street's hosting and product distribution services and transitioning those  
11 roles to EBTM and, in particular, regarding transfer of all inventory stock for  
12 www.loserkids.uk.com from Trinity Street to EBTM.

13 75. RLP is informed and believes and on that basis alleges that, on or about  
14 July 30, 2007, Trinity Street sent Lowlife and EBTM, in particular Masters and Breeden, a  
15 timetable to close the Loserkids.uk.com site and transfer all Loserkids.uk.com inventory from  
16 Trinity Street to EBTM. The timetable provided that the Loserkids.uk.com site would close on  
17 August 6, and that all inventory in stock would be transferred no later than August 20, 2007.

18 76. On August 6, 2007, after the Loserkids.uk.com website had been shut  
19 down, Masters emailed Loserkids and RLP (in particular, Diana Crawford, RLP's Chief  
20 Financial Officer) and feigned an emergency, falsely implying the site was shut down at the  
21 initiative of Trinity Street without prior notice to Lowlife: "Trinity Street has ceased operating  
22 Loserkids UK as at 12 Noon today. The reason we have been given for this action is that they  
23 'urgently required the warehouse space.' ... We have tried unsuccessfully to extend today's  
24 deadline. ... [W]e need to agree very quickly what to do with this site. ..." RLP is informed and  
25 believes and on that basis alleges that Masters' statements, including that Trinity Street shut  
26 down the site on their initiative without notice are fraudulent, false and untrue, fabricated by  
27 Masters with the intent to defraud RLP and Loserkids and part of a broader scheme to  
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1 improperly damage the value and viability of the Loserkids.uk.com site and divert  
2 Loserkids.uk.com's business to EBTM.com.

3           77. On August 8, 2007, Masters emailed Loserkids and RLP (in particular,  
4 Ms. Crawford) and attempted to use this feigned emergency to get RLP to agree to switch from  
5 Trinity Street to EBTM, falsely implying that there had not previously been any plan by Lowlife  
6 and Masters to switch fulfillment to EBTM: "[W]e can proceed with finding an alternative to  
7 Trinity St with the obvious option being a site powered by EBTM which we could go live with at  
8 haste ... [a]s your Joint Venture partner we are attempting to find a solution together."

9           78. On or about August 8, 2007, however, when RLP asked Masters for  
10 correspondence from Trinity Street about why they shut down the Loserkids.uk.com site,  
11 Masters responded by stating in an email to RLP that he had spoken to Trinity Street and they  
12 agreed to "reinstate" the site: "I have personally spoken to Trinity St today and they will  
13 reinstate the site asap—probably today."

14           79. Thus, RLP is informed and believes and on that basis alleges that Masters  
15 and Lowlife, in breach of the Loserkids.uk.com Wind-Down Agreement and as part of a broader  
16 conspiracy with EBTM to steal customers and traffic from the Loserkids.uk.com site, shut down  
17 the Loserkids.uk.com website and attempted to hijack the hosting and product fulfillment  
18 functions for the benefit of a direct competitor, EBTM.

19           80. Additionally, RLP is informed and believes and on that basis alleges that  
20 in furtherance of their fraudulent attempt to divert Loserkids.uk.com's business to EBTM and  
21 based upon his plan to do so, Masters and Lowlife, conspiring with EBTM, breached the  
22 Agreement by consistently and repeatedly failing to operate the site consistent with past practice,  
23 including failing to timely post Atticus or Macbeth product for sale, and failing to market or  
24 promote the site in accordance with the Loserkids.uk.com Wind-Down Agreement.

25           81. As a direct and proximate result of Lowlife's breach of the  
26 Loserkids.uk.com Wind-Down Agreement, Lowlife has damaged RLP by causing lost profits  
27 and harming the goodwill value of Loserkids.uk.com, among other damages.  
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1 **Macbeth Wind-Down Agreement**

2 82. On or about May 29, 2007, at Carlsbad, California, Plaintiff Macbeth (a  
3 subsidiary of RLP) and Defendant Lowlife entered into a written agreement entitled  
4 EXTENSION DISTRIBUTION AND OPERATING AGREEMENT (hereinafter "Macbeth  
5 Wind-Down Agreement"). The Macbeth Wind-Down Agreement generally provides for wind-  
6 down of the distributor relationship between Macbeth and Lowlife. Section 27 of the Agreement  
7 provides that the agreement "shall be interpreted and enforced according to the laws of the State  
8 of California and as if drafted by both parties hereto. Licensor and Licensee irrevocably submit  
9 to the jurisdiction of the state and/or federal courts in San Diego County, California for any  
10 action or proceeding regarding this Agreement."

11 83. Plaintiff Macbeth has performed in all material respects all conditions,  
12 covenants, and promises required on its part to be performed in accordance with the terms and  
13 conditions of the Macbeth Wind-Down Agreement.

14 84. Defendant Lowlife, however, has breached numerous provisions of the  
15 Macbeth Wind-Down Agreement as described below.

16 ***Lowlife's Failure To Pay Royalties***

17 85. Lowlife is contractually bound under Section 8 and Schedule 4 of the  
18 Macbeth Wind-Down Agreement to provide Macbeth a certified royalty statement, and pay  
19 Macbeth a royalty for Lowlife's sales of Macbeth product: "The Licensee must pay the Licensor  
20 in accordance with Schedule 4 of this Agreement." Furthermore, Schedule 4 provides that  
21 payment for the third quarter 2007 is due no later than October 15, 2007: "The Licensee shall  
22 pay the Licensor said Royalty Payment for all Macbeth Products, including but not limited to  
23 Optics, quarterly, as follows: ... Q307 by no later than October 15, 2007." *See also id*  
24 (Providing that, by the same date, Lowlife was to provide the certified royalty statement: "On  
25 each of the dates identified ... the Licensee will provide the Licensor with a royalty statement,  
26 certified to be accurate by an authorized officer of the Licensee, and which specifies the value of  
27 Gross Sales of Products for the preceding quarter.").

1           86. Lowlife has failed and refused to provide the certified royalty statement or  
2 royalty payment for sale of Macbeth product for the third quarter of 2007, which was due on no  
3 later than October 15, 2007.

4           87. As a direct and proximate result of Lowlife's failure to provide the royalty  
5 payments as required under the Macbeth Wind-Down Agreement, RLP has been harmed in an  
6 amount to be proven at trial.

7 *Lowlife's Failure To Timely Ship Macbeth Fall 2007 Orders To Distributors In The Territory*

8           88. Timely shipment of Macbeth product and Macbeth's reputation for timely  
9 and reliable shipment has been a key factor in the success of the Macbeth brand. Timely  
10 delivery is particularly important in the Fall, where there is a relatively short time period for  
11 critical back-to-school sales to the teen and youth demographic which accounts for a significant  
12 portion of Macbeth sales.

13           89. Accordingly, the Macbeth Wind-Down Agreement requires Lowlife to  
14 "use all reasonable endeavours to fulfil Purchase Orders with all reasonable dispatch." Macbeth  
15 Wind-Down Agreement § 7.7.

16           90. RLP is informed and believes and on that basis alleges that Defendants  
17 Lowlife and Masters, however, failed to timely ship Macbeth product and they still have not  
18 shipped all Macbeth product subject to all outstanding Purchase Orders.

19           91. Despite repeated inquiries and requests for information regarding proof of  
20 shipment of Macbeth product, Lowlife has failed or refused to provide the necessary  
21 information.

22           92. As a direct and proximate result of Lowlife's breach of the Macbeth  
23 Wind-Down Agreement, RLP has been harmed in numerous ways, including the following:  
24 (a) lost profits based on Macbeth products not being timely delivered and in stores for much or  
25 all of the critical back-to-school shopping season; (b) loss of goodwill with consumers based on  
26 stores only offering "stale" product or spotty product line coverage during the critical back-to-  
27 school purchasing period; (c) substantial unsold-at-retail Macbeth Fall 2007 product, which will  
28 have to be repurchased by Macbeth upon expiration of the Macbeth Wind-Down Agreement so it

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1 is not "dumped" by Lowlife at severely discounted prices to discount retailers, causing even  
 2 greater harm to the goodwill value and consumer cachet of the brand; (d) additional lost profits  
 3 based on Macbeth sales representatives losing potential sales orders for Spring 2008 or beyond,  
 4 because retail accounts would not place orders for new product for Spring 2008 and beyond  
 5 when they still had not received Fall 2007 product; and (e) loss of goodwill with retail accounts  
 6 based on failure to reliably deliver Macbeth product by agreed upon dates, including retailers  
 7 who will stop carrying or significantly reduce order volume for Macbeth products or will start  
 8 carrying other competing product lines because they were left with empty shelves in Fall 2007  
 9 and don't want to risk that happening again.

10 ***Lowlife's Failure To Timely Post Fall 2007 Macbeth Product On Loserkids.uk.com***

11 93. As described above, Lowlife failed to timely ship and/or post Macbeth  
 12 Fall 2007 product on Loserkids.uk.com, despite that those goods had been delivered by the  
 13 manufacturer directly to Lowlife on or about August 1, 2007, per Lowlife's delivery instructions.  
 14 Instead, Lowlife first posted Macbeth Fall 2007 product for sale on Loserkids.uk.com, after  
 15 repeated requests by RLP, in or about the week of September 10, 2007, after much of the critical  
 16 back-to-school sales period had already ended.

17 94. Moreover, even after it did belatedly post Macbeth Fall 2007 product for  
 18 sale, RLP is informed and believes and on that basis alleges that Lowlife did so only in very  
 19 limited quantities. For example, as of September 21, 2007, the Macbeth Fall 2007 Manchester  
 20 shoe was only available in two sizes—six and eleven—with nothing in between, omitting  
 21 entirely the range of sizes that would account for the vast majority of sales, despite the fact that  
 22 the full range of sizes had been shipped to Lowlife by RLP.

23 95. As a direct and proximate result of Lowlife's breach of the Macbeth  
 24 Wind-Down Agreement, Lowlife has damaged RLP by causing lost profits and harming the  
 25 goodwill of the Macbeth brand, among other damages.

26 ***Lowlife's Failure To Market The Macbeth Brand In The Territory***

27 96. The Macbeth Wind-Down Agreement requires Lowlife to use its "best  
 28 endeavours" "to promote and develop the market" for Macbeth products and to market the

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1 products by allocating four percent of gross sales towards marketing and promotion of Macbeth  
2 products in the Territory:

3 6.1 The Licensee must use its best endeavours in the Territory;

4 6.1.1 to promote and develop the market for Products;

5 6.1.2 to market the Products in accordance with Clause 6.2;

6 6.2 The Licensee will allocate four percent (4%) of Gross Sales  
7 towards marketing and promotion of the Products in the Territory.

8 Macbeth Wind-Down Agreement §§ 6.1-6.2.

9 97. RLP is informed and believes and on that basis alleges that Lowlife,  
10 however, has done little or nothing to market the Macbeth brand and instead, as described above,  
11 has taken actions (or omitted performing its obligations) in order to damage Macbeth and its  
12 goodwill with retail accounts and retail consumers.

13 98. For example, Lowlife received samples for Macbeth Holiday 2007  
14 product, but RLP is informed and believes and on that basis alleges that Lowlife did not show the  
15 line for sale to retail accounts, in violation of its obligations under the Macbeth Wind-Down  
16 Agreement to promote and sell the brand.

17 99. Furthermore, RLP is informed and believes and on that basis alleges that  
18 Lowlife has not spent four percent of gross sales toward marketing and promotion of Macbeth  
19 products in the Territory.

20 100. As a direct and proximate result of Lowlife's breach of the Macbeth  
21 Wind-Down Agreement, Lowlife has damaged RLP by causing lost profits and harming the  
22 goodwill of the Macbeth brand, among other damages.

23 *Lowlife's Failure To Timely Pay Manufacturer (Sito)*

24 101. The Macbeth Wind-Down Agreement provides that Lowlife is responsible  
25 for payment for any products and related costs to product suppliers. *See* Macbeth Wind-Down  
26 Agreement § 8.2 ("The Licensee shall be responsible for payment for any Products and related  
27 costs it has submitted Purchase Orders for ... If Licensor incurs any costs to third party  
28 suppliers ... on behalf of Licensee, Licensee shall make payment to Licensor in accordance with  
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1 Schedule 4"). *See also id* at Schedule 4 (requiring Lowlife to reimburse Macbeth within 15  
 2 days). As a small company, it is difficult for Macbeth to find quality suppliers to produce  
 3 relatively small quantities of product. Macbeth has worked very hard to develop its relationship  
 4 with its manufacturers, and the loss of such a relationship, or a supplier being forced out of  
 5 business because its customers do not timely make a requested payment, would be devastating  
 6 for Macbeth. Having a background in sourcing and production and based on his work as a  
 7 distributor for Macbeth, Defendants Masters and Lowlife understood how losing a supplier  
 8 would damage Macbeth.

9 102. RLP is informed and believes and on that basis alleges that Lowlife,  
 10 however, refused to timely pay Sito Co., LTD ("Sito"), a product supplier for Macbeth Fall 2007  
 11 product. Sito requested payment of approximately \$117,000 from Lowlife in or about late May  
 12 2007. Lowlife, however, failed or refused to pay despite many promises to do so.

13 103. In order to avoid a quality supplier possibly ceasing business due to  
 14 economic hardship and to prevent further damage to Macbeth's relationship with its  
 15 manufacturing sources, on June 1, 2007, Macbeth advanced payment of the full \$117,000  
 16 amount of Lowlife's manufacturing costs to Sito. Despite repeated requests by Sito and Macbeth  
 17 to Lowlife for payment of the invoice, Lowlife failed or refused to pay, until August 13, 2007,  
 18 over two months after the payment was requested.

19 104. As a direct and proximate result of Lowlife's breach of the Macbeth  
 20 Wind-Down Agreement, Lowlife has damaged RLP in an amount including but not limited to  
 21 interest on the advance.

22 ***Lowlife's "Dumping" Of Macbeth Product***

23 105. Section 9 of the Macbeth Wind-Down Agreement prohibits Lowlife from  
 24 selling Macbeth Summer 2007 and Fall 2007 products "[o]ff-Price," defined as sales of such  
 25 products at a price which is greater than 25% below the wholesale price, without the approval of  
 26 Macbeth: "Licensee must obtain the approval of the Licensor to sell Products from the Summer  
 27 and Fall 2007 seasons (or thereafter) 'Off-Price,' which for purposes of this Agreement shall be  
 28

1 defined [as] sales of such Products at a price which is greater than 25% below the wholesale  
2 price.”

3 106. Prohibiting “dumping” or selling of product “off-price” is critically  
4 important for a brand like Macbeth because sale of its product at a deep discount and having its  
5 wares sold through discount or off-price retailers can ruin the goodwill of the brand, because part  
6 of the appeal of the product is the limited availability and “cool factor” associated with a  
7 boutique, niche brand and its promotion by and association with musicians and bands. As a  
8 result, when prospective customers see the products sold at a discount, it impacts their  
9 willingness to pay full price for the goods, and impacts their views as to whether the brand  
10 remains cool or desirable (after all, if the products are being dumped at a discount, the  
11 assumption is the must not have been desirable to other customers because they were “out of  
12 style”).

13 107. RLP is informed and believes and on that basis alleges that Lowlife,  
14 however, has sold Macbeth product “Off-Price” in breach of the Macbeth Wind-Down  
15 Agreement. Furthermore, RLP is informed and believes and on that basis alleges that Lowlife  
16 has sold current Macbeth product offerings, including one of its best selling styles, to undesirable  
17 discount retailers.

18 108. As a direct and proximate result of Lowlife’s numerous breaches of the  
19 Macbeth Wind-Down Agreement, Lowlife has damaged RLP by causing lost profits and  
20 harming the goodwill value of Loserkids.uk.com, among other damages.

## 21 SECOND CAUSE OF ACTION

22 (Breach of the Implied Covenant of Good Faith and Fair Dealing against Defendant Lowlife)

23 109. Plaintiffs reallege and incorporate herein Paragraphs 1 - 108 above in its  
24 Second Cause of Action.

25 110. The Atticus Wind-Down Agreement, Loserkids.uk.com Wind-Down  
26 Agreement, and Macbeth Wind-Down Agreement entered into between RLP and Lowlife  
27 imposed upon each party an implied covenant of good faith and fair dealing requiring that  
28

1 neither party do anything that would injure the rights of the other to receive the benefits of the  
2 Agreements.

3 111. RLP is informed and believes and on that basis alleges that that by reason  
4 of the conduct described herein and other past and present conduct, Lowlife has intentionally and  
5 repeatedly breached the implied covenant of good faith and fair dealing and prevented RLP and  
6 its affiliates from achieving the purpose and benefits of the Agreements.

7 112. As a direct and proximate result of Lowlife's actions, RLP has been  
8 damaged in an amount to be proven at trial.

9 **THIRD CAUSE OF ACTION**

10 (Fraud In The Inducement Against Lowlife and Masters)

11 113. Plaintiffs reallege and incorporate herein Paragraphs 1 - 112 above in its  
12 Third Cause of Action.

13 114. As noted above, on or about May 29, 2007, at Carlsbad, California,  
14 Plaintiffs RLP and Atticus Clothing entered into a written agreement with Defendant Lowlife  
15 entitled Atticus Asset Purchase Agreement. Section 9.9 of the Atticus Asset Purchase  
16 Agreement provides that: "This Agreement shall be governed by and construed in accordance  
17 with the internal laws of the State of California without regard to its conflicts or choice of law  
18 principles."

19 115. On or about May 29, 2007, at Carlsbad, California, Plaintiffs RLP, Atticus  
20 Clothing and/or their affiliated companies concurrently entered into the Loserkids.uk.com Wind-  
21 Down Agreement, Atticus Wind-Down Agreement and Macbeth Wind-Down Agreement  
22 described above (collectively the "Wind-Down Agreements"). Without the concurrent execution  
23 of the Wind-Down Agreements, RLP and Atticus Clothing would not have entered into the  
24 Atticus Asset Purchase Agreement.

25 116. On or about May 14, 2007, during a meeting at the offices of Seltzer,  
26 Caplan, McMahon Vitek in San Diego, California, Defendant Lowlife represented, through its  
27 agent Michael Riney and others, to RLP, through Ms. Crawford, Ms. Arroyo, Mr. Humphrey and  
28

1 others that Lowlife was working with a "financing source" in connection with Lowlife's  
2 purchase of the Atticus assets described under the Atticus Asset Purchase Agreement.

3 117. Further, on or about May 29, 2007, at Carlsbad, California, Defendant  
4 Lowlife (specifically, Dale Masters) represented to RLP, Atticus Clothing and/or their affiliated  
5 companies (specifically Jon Humphrey) that Lowlife would fulfill its obligations under the terms  
6 of the Wind-Down Agreements.

7 118. The representations made by Lowlife and Masters were in fact false. The  
8 true facts were that Lowlife was not working with a "financing source" or obtaining loans or  
9 investment to underwrite a portion of the purchase price for Lowlife's purchase of the Atticus  
10 assets described under the Atticus Asset Purchase Agreement, but instead Masters had been  
11 conspiring with EBTM, a direct competitor of Loserkids in the UK, to sell the Atticus brand and  
12 Lowlife to EBTM.

13 119. Further, RLP is informed and believes and on that basis alleges that  
14 Lowlife had no intention of fulfilling its obligations under the terms of the accompanying Wind-  
15 Down Agreements at the time it entered into the agreements because Lowlife was already  
16 secretly in negotiations and/or under agreement to be sold to EBTM, a direct competitor to RLP  
17 and Loserkids. Indeed, RLP is informed and believes and on that basis alleges that Lowlife has  
18 repeatedly breached the agreements in a consistent effort to harm RLP and its brands and divert  
19 business to EBTM.

20 120. For example, Lowlife represented under the Atticus Wind Down  
21 Agreement and the Loserkids.uk.com Wind-Down Agreement that it would continue to ship  
22 Atticus product for sale on Loserkids websites, in the United States and UK, for Atticus Fall  
23 2007 and thereafter. However, these representations made by Lowlife were in fact false. The  
24 true facts were that, because Lowlife was to sell itself, including the Atticus brand, to EBTM—a  
25 direct competitor of Loserkids—that Lowlife would not ship any significant amount of Atticus  
26 Fall 2007 product for sale on Loserkids sites in either the United States or UK. Indeed, on  
27 August 31, 2007, during a telephone conversation at Carlsbad, California, Lowlife (specifically  
28 its agent Masters), disclosed for the first time to RLP (specifically Ms. Crawford and Ms.  
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1 Arroyo), that Lowlife would not ship Atticus product for sale on Loserkids.com, despite the  
2 Agreement, because, in substance, he and the EBTM board did not want to supply Atticus to a  
3 competitor.

4 121. As a further example, Lowlife represented under the Loserkids.uk.com  
5 Wind-Down Agreement that it would provide "general marketing and promotion services for the  
6 Site, ... ensuring that all relevant key words and other technical specifications for the Site are  
7 provided ... for the purpose of registering Loserkids.uk.com with search engines," and to use  
8 "commercially reasonable efforts to promote Loserkids.uk.com by developing agreements with  
9 other related sites to cause a hyperlink to be created from such sites." See §2(e) However, these  
10 representations made by Lowlife were in fact false. The true facts were that, because Lowlife  
11 was to sell itself, including the Atticus brand, to EBTM—a direct competitor of Loserkids—that  
12 Lowlife intended to divert business from Loserkids.uk.com to EBTM.com including developing  
13 links to EBTM.com rather than Loserkids.uk.com. Indeed, the hyperlink on the  
14 Atticusclothing.com website, operated by Lowlife, under the tab "SHOP" links to EBTM.com,  
15 rather than Loserkids.uk.com, for purchases of Atticus clothing.

16 122. As a further example, Lowlife represented in the Loserkids.uk.com Wind-  
17 Down Agreement that "[c]onsistent with past practice, Trinity Street Direct Limited ... will be  
18 utilized for all hosting and product distribution services for the Site" with a change made only  
19 with the approval of Loserkids. However, these representations made by Lowlife were in fact  
20 false. The true facts were that Lowlife intended to move hosting and product distribution  
21 services for the Loserkids.uk.com site from Trinity Street to EBTM. Indeed, as described above,  
22 Lowlife and EBTM's agent, Masters, and EBTM's President Mr. Breeden, secretly visited  
23 Trinity Street within days of executing the Lowerkids.uk.com Wind-Down Agreement and  
24 informed Trinity Street's agent, Mr. Murray, that EBTM recently purchased Atticus and the  
25 Loserkids.uk.com store, and that all services previously performed by Trinity Street for  
26 Loserkids.uk.com would be run by EBTM rather than Trinity Street.

27 123. When Lowlife made the representation that it was working with a  
28 "financier" and that it would fulfill the terms of the Wind-Down Agreements, Lowlife knew the  
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1 representations to be false because it was in negotiations with or had already agreed to sell itself  
2 to EBTM—a direct competitor of RLP. Furthermore, Lowlife made these representations with  
3 the intention of deceiving and defrauding RLP and to induce RLP to act in reliance on these  
4 representations in the manner hereafter alleged, or with the expectation that they would so act.

5 124. At the time the representations were made by Lowlife and Masters, and at  
6 the time RLP entered into the Atticus Asset Purchase Agreement and accompanying Wind-Down  
7 Agreements, RLP did not believe that the representations were false, but believed them to be true  
8 and reasonably relied upon them. RLP reasonably relied upon Lowlife's and Masters'  
9 representation that they were working with a "financing source" and not a direct competitor,  
10 such as EBTM, because otherwise there would be an inherent conflict in Lowlife's ability to  
11 perform under the Wind-Down Agreements. Moreover, RLP reasonably relied upon Lowlife's  
12 and Masters' representation that they would fulfill their obligations under the Wind-Down  
13 Agreements. Had RLP known the true facts, it would not have entered into the Atticus Asset  
14 Purchase Agreement or the accompanying Wind-Down Agreements.

15 125. As a proximate result of the fraudulent conduct of the defendant(s) as  
16 herein alleged, RLP was damaged in that it was induced to and did (a) pay over \$230,000 in  
17 invoices for Atticus product shipped to Lowlife for which RLP has not been repaid by Lowlife;  
18 (b) expend considerable effort and monies to bring fulfillment for the United States  
19 Loserkids.com website in-house in reliance on Lowlife timely delivering Fall 2007 Atticus  
20 products that could be sold for the fall back-to-school season on Loserkids.com; (c) rely on  
21 Lowlife to operate Loserkids.uk.com consistent with past practice and to promote the site; and  
22 (d) rely on Lowlife to sell, promote and timely distribute its Macbeth products in the Territory.

23 126. RLP is informed and believes and on that basis alleges that Masters and  
24 Lowlife never intended to comply with their obligations under the Wind-Down Agreements.  
25 Instead, RLP is informed and believes and on that basis alleges that Masters and Lowlife  
26 improperly and fraudulently induced RLP to enter into the Atticus Asset Purchase Agreement  
27 and accompanying Wind-Down Agreements, in order to control Loserkids.uk.com and Macbeth  
28 distribution in the Territory so that Lowlife, Masters and their co-conspirator, EBTM, could

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1 control the success or failure of RLP's businesses in the Territory and could misappropriate  
2 RLP's trade secrets, as such misappropriation is alleged in detail below.

3 127. RLP is informed and believes and on that basis alleges that, through the  
4 Wind-Down Agreements, Masters and Lowlife created, and sold as a package to EBTM, a  
5 virtual strangle-hold on RLP's ability to make sales, to build and preserve brand value in the  
6 Territory, and to otherwise compete on an even footing in the consumer marketplace. RLP is  
7 informed and believes and on that basis alleges that, Lowlife and Masters, conspiring with  
8 EBTM, further tried to solidify that ill-gotten control and unfairly compete in the marketplace  
9 by causing the Loserkids.uk.com site to be shut down through a fraudulent scheme built on lies  
10 and false pretences in an effort to hijack the fulfillment function for Loserkids.uk.com,  
11 transferring it to EBTM.

12 128. RLP is informed and believes and on that basis alleges that Lowlife,  
13 EBTM and Masters conspired to hobble RLP as a competitor by failing to fulfill Lowlife's  
14 contractual obligations to promote sales through the Loserkids.uk.com site and for Macbeth  
15 products in the Territory, thereby intentionally devaluing the goodwill associated with  
16 Loserkids.uk.com and Macbeth products during the period in which Lowlife and Masters (and  
17 EBTM, by virtue of its ownership of Lowlife) controlled promotion of the site and brand,  
18 respectively, in the Territory. RLP is informed and believes and on that basis alleges that  
19 Lowlife, EBTM and Masters illegally conspired to provide EBTM a seven month head-start on a  
20 direct competitor and, through neglect and inaction as well as affirmative actions, ensured that  
21 the value of the Loserkids.uk.com website and Macbeth brands would be severely damaged in  
22 the Territory by the time the wind-down agreements expired by their terms on December 31,  
23 2007. RLP is informed and believes and on that basis alleges that this was all a fraudulent and  
24 intentional effort by Lowlife and Masters, conspiring with EBTM, to damage RLP and the value  
25 of its brands and business.

26 129. The aforementioned conduct of Lowlife and Masters was fraudulent in  
27 that they made intentional misrepresentations, deceived, and concealed material facts known to  
28 Lowlife and Masters with the intention to deprive RLP of property or legal rights or otherwise  
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1 causing injury, and was despicable conduct that subjected RLP to a cruel and unjust hardship in  
 2 conscious disregard of RLP's rights, so as to justify an award of exemplary and punitive  
 3 damages.

#### 4 FOURTH CAUSE OF ACTION

5 (Rescission Against Lowlife)

6 130. Plaintiffs reallege and incorporate herein Paragraphs 1 - 129 above in its  
 7 Fourth Cause of Action.

8 131. As alleged herein in Paragraphs 113 - 129 above, Lowlife fraudulently  
 9 induced RLP to enter into the Atticus Asset Purchase Agreement. Accordingly, RLP is entitled,  
 10 at its election, to rescission of the Atticus Asset Purchase Agreement, and return to RLP of the  
 11 consideration furnished under the terms of the Atticus Asset Purchase Agreement, plus damages  
 12 for harm caused to the Atticus brand from Defendants' failure to reasonably promote the brand  
 13 including but not limited to failure to offer its Fall 2007 line for sale on Loserkids.com or  
 14 Loserkids.uk.com.

#### 15 FIFTH CAUSE OF ACTION

16 (Misappropriation Of Trade Secrets Against All Defendants (Civil Code § 3426, *et seq.*))

17 132. Plaintiffs reallege and incorporate herein Paragraphs 1 - 131 above in its  
 18 Fifth Cause of Action.

19 133. RLP possesses trade secrets, including customer lists and data, that derive  
 20 economic value from not being known to the public and are the subject of efforts that are  
 21 reasonable under the circumstances to maintain their secrecy.

22 134. Section 9 of the Loserkids.uk.com Wind-Down Agreement grants Lowlife  
 23 the non-exclusive right to use customer data and other trade secrets solely in connection with  
 24 operation of Loserkids.uk.com, and makes clear that all Loserkids content (and all "intellectual  
 25 property rights of any kind (whether registered, unregistered, statutory, common law, and in all  
 26 jurisdictions throughout the universe) . . . arising out of or in connection with the use of such  
 27 Loserkids Content and/or the operation of the Site . . .") is and "shall remain the sole and  
 28 exclusive property of Loserkids." Moreover, the Loserkids.uk.com website assured those who  
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1 signed up for the Loserkids mailing list that the information would not be given to third parties:  
2 "Your details will be stored and used responsibly and in accordance with our privacy policy and  
3 we will not pass on details to other third parties." See  
4 <http://www.loserkids.uk.com/pages/loserlist.asp>.

5 135. RLP is informed and believes and based and on that basis alleges that  
6 Defendants accessed and misappropriated RLP's trade secrets including its customer lists and  
7 data when they were under a duty not to do so.

8 136. RLP is informed and believes and on that basis alleges that EBTM  
9 acquired said trade secrets through improper means and knew or had reason to know that the  
10 trade secrets were acquired by improper means or acquired or disclosed where there was a duty  
11 to maintain their secrecy or limit their use.

12 137. For example, RLP is informed and believes and on that basis alleges that  
13 Lowlife and EBTM falsely informed Trinity Street that EBTM owned the Loserkids.uk.com site  
14 and Lowlife delivered Loserkids.uk.com's customer lists and data to EBTM, in violation of  
15 privacy laws, the express privacy statements on the website, and despite the fact that the data,  
16 which clearly arose out of the operation of the Site, did not belong to Lowlife and by being  
17 shared with EBTM certainly was not being used for a legitimate purpose relating to operating the  
18 Loserkids.uk.com site.

19 138. RLP is informed and believes and on that basis alleges that EBTM  
20 conspired with Lowlife to misappropriate RLP's trade secrets. RLP is informed and believes and  
21 on that basis alleges that EBTM was and is motivated by a desire to expand its customer base by  
22 stealing RLP's trade secrets and customer lists and data. Indeed, EBTM has told its investors  
23 that it is "succeeding in reaching a growing and loyal customer base primarily between the ages  
24 of 16 and 30 years."

25 139. Loserkids.com, RLP's oldest brand, has the opportunity to reap the  
26 rewards of the public or private capital markets which can offer attractive valuations to  
27 ecommerce companies. Such valuations are based on a variety of factors including sales figures,  
28 profitability, website traffic and site features. RLP's intent, as shared with Masters during its  
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1 relationship with him, has always been to benefit from Loserkids.com's unique market niche to  
2 capitalize on such an opportunity. In July 2005, RLP launched its first region specific website in  
3 Loserkids.uk.com to expand Loserkids' global reach. EBTM is a highly similar business model,  
4 which coincidentally started trading in July 2005. In June 2007, EBTM successfully raised  
5 £5.25 million in the UK public markets, despite its April 2007 fiscal year end net operating loss  
6 of £684,000. By comparison, Loserkids.uk.com, until this year, had recognized sales growth  
7 each and every month, while remaining profitable throughout. However, Defendants' actions,  
8 including but not limited to their misappropriation of Loserkids' trade secrets, has significantly  
9 damaged, by millions of dollars, the brand's financial valuation in both the UK and the US.

10 140. Moreover, by reason of Defendants' acts alleged herein, RLP has and will  
11 suffer damage to its business, including but not limited to lower valuation and the loss of sales  
12 and profits it would have made but for Defendants' acts. RLP is further entitled to recover from  
13 Defendants the gains, profits, advantages, and unjust enrichment they have obtained as a result of  
14 their wrongful acts as hereinabove alleged.

15 141. Economic damages cannot fully compensate RLP for the harm caused if  
16 EBTM has used or does use RLP's trade secret information. Unless and until restrained and  
17 enjoined from disclosing or using RLP trade secret information, Defendants will continue to do  
18 so, all to RLP's irreparable damage. Accordingly, RLP is entitled to an injunction restraining  
19 Defendants, their officers, agents, employees, and all persons acting in concert with them from  
20 engaging in further unlawful acts and from reaping any additional commercial advantage from  
21 their misappropriation of RLP's trade secrets.

22 142. RLP is informed and believe and based thereon alleges that these acts of  
23 misappropriation by Defendants were willful and malicious toward RLP, and undertaken with  
24 the intent of injuring RLP in its business or in such conscious disregard of RLP's rights that RLP  
25 is thereby entitled to an award of exemplary damages and reasonable attorneys' fees against  
26 Defendants in an amount according to proof.

1 SIXTH CAUSE OF ACTION

2 (Breach of Fiduciary Duty Against Defendants Lowlife and Masters)

3 143. Plaintiffs reallege and incorporate herein Paragraphs 1 - 142 above in its  
4 Sixth Cause of Action.

5 144. Lowlife and Masters were, according to Masters, in a "joint venture" with  
6 RLP regarding operation of the Loserkids.uk.com website. Lowlife and Masters were in a  
7 position of trust with discretion to operate and promote the site for the benefit of its owners.  
8 Similarly, Lowlife and Masters were in a position of trust with responsibility to promote, sell and  
9 distribute Macbeth product in the Territory.

10 145. Lowlife and Masters owed and owe RLP fiduciary duties to act in the best  
11 interest of RLP with regarding to operation and promotion of Loserkids.uk.com and distribution  
12 and promotion of Macbeth and not to use their fiduciary position for their own benefit or for the  
13 benefit of EBTM to the detriment of RLP.

14 146. RLP reasonably placed trust and confidence in Lowlife and Masters when  
15 it entrusted Lowlife and Masters with its trade secret information and trust in operating and  
16 promoting Loserkids.uk.com and distributing and promoting of Macbeth product in the Territory.

17 147. RLP is informed and believes and on that basis alleges that Lowlife and  
18 Masters have breached and threaten to further breach their fiduciary duties to RLP by abusing  
19 the trust placed in them by, among other things, failing to operate and promote Loserkids.uk.com  
20 consistent with past practice and, instead, secretly and willfully conspiring with each other and  
21 EBTM to divert business from Loserkids.uk.com to EBTM.com.

22 148. Similarly, RLP is informed and believes and on that basis alleges that  
23 Lowlife and Masters have breached and threaten to further breach their fiduciary duties to RLP  
24 by abusing the trust placed in them by failing to distribute and promote Macbeth product in the  
25 Territory consistent with past practice and, instead, intentionally seeking to devalue and unfairly  
26 prevent fair competition to Lowlife and EBTM with respect to sales of Macbeth products in the  
27 UK.

1           149. Additionally, RLP is informed and believes and on that basis alleges that  
2 Lowlife and Masters have breached and threaten to further breach their fiduciary duties to RLP  
3 by misappropriating and furnishing RLP's trade secret information to EBTM.

4           150. As a direct and proximate result of these breaches of fiduciary duty by  
5 Lowlife and EBTM, RLP has been damaged in an amount not yet ascertained, but which is in  
6 excess of the jurisdictional minimum of this Court.

7           151. RLP is informed and believes and on that basis alleges that the above acts  
8 by Lowlife and Masters were done fraudulently and intentionally, with malice and oppression  
9 toward RLP, and with the intent of injuring RLP in its business or in such conscious disregard of  
10 RLP's rights that RLP is entitled to an award of exemplary or punitive damages against Lowlife  
11 and Masters in an amount according to proof.

12                                   SEVENTH CAUSE OF ACTION

13           (Aiding and Abetting Breach of Fiduciary Duty Against Defendant EBTM)

14           152. Plaintiffs reallege and incorporate herein Paragraphs 1 - 151 above in its  
15 Seventh Cause of Action.

16           153. RLP is informed and believes and on that basis alleges that EBTM aided  
17 and abetted Lowlife and Masters' breach of fiduciary duty. RLP is informed and believes and  
18 based thereon alleges that EBTM gave substantial assistance to Lowlife and Masters in, among  
19 other things, their efforts to divert business from Loserkids.uk.com to EBTM.com and  
20 wrongfully transmit or cause to be transmitted RLP's trade secret information to EBTM.

21           154. RLP is informed and believes and on that basis alleges that EBTM knew  
22 and knows of Lowlife and Masters' conduct, and breaches of fiduciary duties to RLP, and that  
23 EBTM has given and will continue to give substantial assistance and encouragement to Masters  
24 and Lowlife to breach their fiduciary duties. Indeed, RLP is informed and believes and on that  
25 basis alleges that Lowlife reviewed the terms of Atticus Asset Purchase Agreement and

26           155. As a direct and proximate result of these actions by EBTM, RLP has been  
27 damaged in an amount not yet ascertained, but which is in excess of the jurisdictional minimum  
28 of this Court.

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1 156. RLP is informed and believes and on that basis alleges that the above acts  
2 by EBTM were done fraudulently and intentionally, with malice and oppression toward RLP,  
3 and with the intent of injuring RLP in its business or in such conscious disregard of RLP's rights  
4 that RLP is entitled to an award of exemplary or punitive damages against EBTM in an amount  
5 according to proof.

6 **EIGHTH CAUSE OF ACTION**

7 (Intentional Interference with Contract Against EBTM and Does 1 through 25)

8 157. Plaintiffs reallege and incorporate herein Paragraphs 1 - 156 above in its  
9 Eighth Cause of Action.

10 158. Lowlife and Masters entered into agreements with RLP as described  
11 above.

12 159. RLP is informed and believes and on that basis alleges that EBTM knew  
13 of the existence of Lowlife and Masters' agreements with RLP.

14 160. RLP is informed and believes and on that basis alleges that EBTM has  
15 engaged in intentional acts to induce Lowlife and Masters to breach their agreements with and  
16 otherwise cause injury to RLP, including but not limited to the following: (a) secretly plotting to  
17 transfer fulfillment for Loserkids.uk.com from Trinity Street to EBTM; (b) changing the link on  
18 Atticusclothing.com to buy Atticus product from Loserkids.uk.com to EBTM.com; (c) failing  
19 and refusing to ship Fall 2007 Atticus product for sale on Loserkids.com in the United States;  
20 (d) failing and refusing to ship any significant quantity of Fall 2007 Atticus product for sale on  
21 Loserkids.uk.com; and (e) seeking and obtaining RLP's trade secret information.

22 161. EBTM's conduct has caused Lowlife and Masters to breach their  
23 agreements with RLP as described above and misappropriate trade secret information as  
24 described below.

25 162. As a direct and proximate result of these acts by EBTM, RLP has been  
26 damaged in an amount not yet ascertained, but in excess of the jurisdictional minimums of this  
27 court.



1 163. RLP is informed and believes and on that basis alleges that these acts of  
 2 intentional interference by EBTM were willful and malicious toward RLP, and with the intent of  
 3 injuring RLP in its business or in such conscious disregard of RLP's rights that RLP is thereby  
 4 entitled to an award of exemplary damages and reasonable attorneys' fees against EBTM in an  
 5 amount according to proof.

#### 6 NINTH CAUSE OF ACTION

7 (Unfair Competition Against All Defendants)

8 164. Plaintiffs reallege and incorporate herein Paragraphs 1 - 163 above in its  
 9 Ninth Cause of Action.

10 165. RLP is informed and believes and on that basis alleges that Defendants  
 11 have used unlawful means, including breach of contract, breach of fiduciary duty and  
 12 misappropriation of trade secret information, to unfairly compete with RLP in violation of  
 13 California common law.

14 166. Additionally, RLP is informed and believes and on that basis alleges that  
 15 Defendants unfairly competed with RLP in violation of the Atticus Asset Purchase Agreement,  
 16 and California common law by implementing a stealth scheme to advertise by use of Tom  
 17 DeLonge's and Blink 182's names by referencing them in the meta data for the Atticus webpage  
 18 on EBTM.com, which meta data was known by EBTM to be read and indexed by search engine  
 19 algorithms employed by Google and other major internet search providers.

20 167. As noted above, RLP businesses have been quite successful, in significant  
 21 part due to their affiliation with RLP's owner Tom DeLonge and RLP's historical affiliation with  
 22 his current and former bands, including Blink-182. Indeed, the websites for Mr. DeLonge's  
 23 current band, Angeles & Airwaves, and former band, Blink-182, both link to Loserkids.com. See  
 24 <http://www.blink182.com> and <http://www.angelsandairwaves.com>.

25 168. Accordingly, to insure RLP's rights are protected, and that Lowlife was  
 26 under no illusions that the Atticus assets RLP sold to Lowlife included any rights to use or  
 27 exploit RLP's relationships with Mr. DeLonge, Blink 182 or any of its other popular music  
 28 affiliations, Section 4.4 of the Atticus Asset Purchase Agreement provides that "the Purchased  
 N72216766.5

Assets do not include, and expressly exclude for all purposes, any use or right to use or reference the name or likeness of Tom DeLonge . . . or the bands or musical groups commonly known as 'Blink 182.'"

169. However, RLP is informed and believes and on that basis alleges that EBTM has been using Tom DeLonge's name and the name of his former band, Blink 182, in connection with promoting EBTM. RLP is informed and believes and on that basis alleges that EBTM has engaged in this wrongful conduct, notwithstanding that its subsidiary Lowlife expressly knew and acknowledged in the Atticus Asset Purchase Agreement that no rights to use any of those names were included in the Atticus brand assets Lowlife acquired from RLP.

170. More specifically, RLP is informed and believes and on that basis alleges that EBTM has included in its meta data for the Atticus web page, <http://www.ebtm.com/m-7-atticus-clothing-at-ebtm.aspx>, the following phrases: "Atticus Clothing. Designed by Tom DeLonge" and "Atticus Clothing T Shirts T-Shirts tshirts blink 182." RLP is informed and believes and on that basis alleges that EBTM intentionally and knowingly inserted these phrases in its website meta data as a stealth means to improperly advertise and divert commercial traffic to the EBTM.com site by use of Tom DeLonge's and Blink 182's names in violation of the Atticus Asset Purchase Agreement, as EBTM knew that this meta data is read and indexed by search engine algorithms employed by Google and other major internet search providers. Indeed, on or about October 4, 2007, when the words "Atticus clothing" were typed into the Google search engine, the sixth website listed in the search result was a link to the Atticus webpage on EBTM.com, <http://www.ebtm.com/m-7-atticus-clothing-at-ebtm.aspx>, with the phrase "Atticus Clothing. Designed by Tom DeLonge" in the search result:

**Atticus Clothing at EBTM**

Atticus Clothing. Designed by Tom Delonge. ... Atticus Clothing. New Season on stock and ready to ship now! Don't see what you want? ...  
[www.ebtm.com/m-7-atticus-clothing-at-ebtm.aspx](http://www.ebtm.com/m-7-atticus-clothing-at-ebtm.aspx) - 56k -

1 171. Moreover, the phrase "Atticus Clothing. Designed by Tom DeLonge" is  
 2 false and misleading to consumers, as Tom DeLonge did not design the Fall 2007 Atticus  
 3 clothing being sold on EBTM's website. Put simply, RLP is informed and believes and on that  
 4 basis alleges that EBTM unfairly competed with RLP by stealing the value associated with  
 5 RLP's successful relations and associations with popular music celebrities in order to mislead  
 6 consumers and illegally compete with, and steal customers from RLP.

7 172. As a result of the wrongful acts described above, Lowlife, EBTM and  
 8 Masters unfairly competed with RLP in the marketplace.

9 173. As a direct and proximate cause of such unfair competition, RLP has been  
 10 damaged in an amount not yet ascertained, but which is in excess of the jurisdictional minimum  
 11 of this Court. RLP is further entitled to recover from the gains, profits, advantages, and unjust  
 12 enrichment obtained by Defendants as a result of their unlawful conduct.

13 174. RLP is informed and believe and based thereon alleges that these acts of  
 14 unfair competition by Defendants were fraudulent, willful and malicious toward RLP, and with  
 15 the intent of injuring RLP in its business or in such conscious disregard of RLP's rights that RLP  
 16 is thereby entitled to an award of exemplary damages and reasonable attorneys' fees against  
 17 Defendants in an amount according to proof.

#### 18 TENTH CAUSE OF ACTION

19 (Violation of Business & Professions Code 17200 Against All Defendants)

20 175. Plaintiffs reallege and incorporate herein Paragraphs 1 - 174 above in its  
 21 Tenth Cause of Action.

22 176. Defendants' conduct alleged above constitutes unlawful and unfair  
 23 business acts and is unfair competition in violation of Business & Professions Code Section  
 24 17200 *et seq.*

25 177. These wrongful acts have proximately caused and will continue to cause  
 26 RLP substantial injury, including injury to its reputation, loss of customers, and diminution in  
 27 value of its confidential information and other proprietary materials. These actions will cause  
 28

1 imminent irreparable harm and injury to RLP, the amount of which will be difficult to ascertain  
2 if they continue. RLP is without an adequate remedy at law.

3 178. RLP is entitled to Court Orders against Defendants as necessary to prevent  
4 this unfair competition, including an injunction restraining Defendants, their officers, agents,  
5 employees, and all persons acting in concert with them from engaging in further such unlawful  
6 conduct, and, if necessary, for restitution and disgorgement of any funds received, which are  
7 necessary to restore money or property to RLP that were acquired by Defendants by means of  
8 unfair competition.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants  
11 Lowlife, Masters, EBTM and the Doe Defendants as appropriate to the claims, as follows:

12 1. General damages in an amount in excess of the jurisdictional minimum of  
13 this Court, and according to proof, plus interest;

14 2. Restitution based on Defendants' own unjust enrichment and an order for  
15 Defendants to disgorge and restore all funds received by means of their unfair, unlawful and  
16 fraudulent acts and practices in an amount according to proof;

17 3. Exemplary and punitive damages according to proof;

18 4. Rescission of the Atticus Asset Purchase Agreement at RLP's election;

19 5. A preliminary and permanent injunction enjoining Defendants, and each  
20 of them, and each of their agents, employees, and/or representatives, and any and all persons or  
21 entities acting under their direction and control, from, without further order of the Court or  
22 RLP's written consent:

23 (a) using or disclosing in any fashion whatsoever any trade secret  
24 information disclosed to EBTM by Lowlife, Masters and Does 1 through 25, which information  
25 is not generally known to the public; and

26 (b) return to Plaintiffs immediately any and all of Plaintiffs trade  
27 secret information, including but not limited to customer lists and data and all other document as  
28 defined pursuant to California Rules of Evidence 250, 255 and 260, which contain, represent,  
A/72216766.5

1 depict or reflect any of Plaintiffs' trade secret information, which information is not generally  
2 known to the public;

3 6. An accounting from Defendants of their use of Plaintiffs' trade secret  
4 information for their benefit and not Plaintiffs and a constructive trust for the benefit of Plaintiffs  
5 to be imposed upon all funds, assets, revenues and profits Defendants have or will derive from  
6 their unfair, unlawful and fraudulent acts and their misappropriation of Plaintiffs' trade secrets or  
7 interference with Plaintiffs' vendor, distributor or retailer relationships;

8 7. An accounting from Defendants of royalties due to Plaintiffs under the  
9 applicable agreements;

10 8. Costs and attorneys fees pursuant to terms of applicable agreements,  
11 including the Atticus Asset Purchase Agreement Section 9.4 ("The Prevailing Party in any action  
12 brought with respect to or to enforce any right or remedy under this Agreement shall be entitled  
13 to recover from the non-prevailing Party or Parties all reasonable costs and expenses incurred by  
14 the prevailing Party in connection with such action, including without limitation reasonable  
15 attorneys' fees and prejudgment interest"), Macbeth Wind-Down Agreement Section 31.1  
16 (same), and Loserkids.uk.com Wind-Down Agreement Section 6 ("Each Party hereto agrees to  
17 indemnify and hold the other Party ... harmless against any claim liability, cost and expenses  
18 (including attorneys' and accountants' fees reasonably incurred) in connection with any breach  
19 or alleged breach of this Agreement by the indemnifying party or otherwise as a result of the  
20 indemnifying party's actions or omissions in connection with the operation of the Site.")

21 9. Attorneys' fees pursuant to Civil Code Section 3426.4; and  
22  
23  
24  
25  
26  
27  
28

10. For such other and further relief as the Court may deem just and proper.

DATED: November 13, 2007

BINGHAM McCUTCHEN LLP

By: 

J. Warren Rissier

Attorneys for Plaintiffs Really Likeable People, Inc.,  
Loserkids, Inc., Macbeth, Inc., Macbeth Optics, LP, and  
Really Likeable People II, Inc. (formerly Atticus Clothing,  
Inc.)



DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues as to which a jury is available.

DATED: November 13, 2007

BINGHAM McCUTCHEN LLP

By: 

J. Warren Rissier

Attorneys for Plaintiffs Really Likeable People, Inc.,  
Losekids, Inc., Macbeth, Inc., Macbeth Optics, LP, and  
Really Likeable People II, Inc. (formerly Atticus Clothing,  
Inc.)

NOV-13-07 06:26PM FROM-FIRST LEGAL SUPPORT

T-236 P.06/07 F-762

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>J. Warren Rissler (SBN 197939)</b> <b>Bingham McCutchen LLP</b> <b>355 S. Grand Avenue, 44th Floor</b> <b>Los Angeles, CA 90071</b> TELEPHONE NO.: (213) 680-6400 FAX NO.: (213) 680-8499		FOR COURT USE ONLY  <b>FILED</b> <b>CIVIL BUSINESS OFFICE 19</b> <b>CLERK-SUPERIOR COURT</b> <b>SAN DIEGO COUNTY, CA</b>  <b>07 NOV 13 PM 4:04</b>
ATTORNEY FOR (Name): <b>Plaintiffs Really Likeable People, Inc., et al.</b>		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SAN DIEGO</b> STREET ADDRESS: <b>330 West Broadway</b> MAILING ADDRESS: <b>330 West Broadway</b> CITY AND ZIP CODE: <b>San Diego, CA 92101</b> BRANCH NAME: <b>The Hall of Justice</b>		
CASE NAME: <b>REALLY LIKEABLE PEOPLE, INC., et al. v. LOWLIFE CORPORATION, LTD, et al.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		CASE NUMBER: <b>37-2007-00081582-CU-BC-CTL</b>
<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <input type="checkbox"/> Other P/DPDWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DPDWD (23) <b>Non-P/DPDWD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DPDWD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): Ten

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 13, 2007

J. Warren Rissler

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Form Adopted for Mandatory Use  
Judicial Council of California  
CM-010 (Rev. July 1, 2007)

## CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 3.30, 3.220, 3.400-3.403, 3.740;  
Cal. Standards of Judicial Administration, std. 3.10  
www.courtinfo.ca.gov



NOV-13-07 06:26PM FROM-FIRST LEGAL SUPPORT

T-236 P.06/07 F-762

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): J. Warren Rissler (SBN 197939) Bingham McCutchen LLP 355 S. Grand Avenue, 44th Floor Los Angeles, CA 90071 TELEPHONE NO.: (213) 680-6400. FAX NO.: (213) 680-6499 ATTORNEY FOR (Name): Plaintiffs Really Likeable People, Inc., et al.		FOR COURT USE ONLY  FILED CIVIL BUSINESS OFFICE 19 (CIVIL DIVISION)  07 NOV 13 PM 6:04  CLERK-SUPERIOR COURT SAN DIEGO COUNTY, CA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: The Hall of Justice		
CASE NAME: REALLY LIKEABLE PEOPLE, INC., et al. v. LOWLIFE CORPORATION, LTD, et al.		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: 37-2007-00081582-CU-BC-CTL  JUDGE:  DEPT:

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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Ten
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
- Date: November 13, 2007

J. Warren Rissler

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

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Page 1 of 2

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 Judicial Council of California  
 CM-010 (Rev. July 1, 2007)

## CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 3.30, 3.220, 3.400-3.403, 3.740.  
 Cal. Standards of Judicial Administration, Std. 3.10  
 www.courtinfo.ca.gov



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 685-6028	
PLAINTIFF(S) / PETITIONER(S): REALLY LIKEABLE PEOPLE INC et.al.	
DEFENDANT(S) / RESPONDENT(S): LOWLIFE CORPORATION LTD et.al.	
REALLY LIKEABLE PEOPLE INC VS. LOWLIFE CORPORATION LTD	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2007-00081582-CU-BC-CTL

Judge: William R. Nevitt, Jr.

Department: C-64

COMPLAINT/PETITION FILED: 11/13/2007

**CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL  
REQUIREMENTS LISTED BELOW**

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

**COMPLAINTS:** Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2007-00081582-CU-BC-CTL CASE TITLE: REALLY LIKEABLE PEOPLE INC vs. LOWLIFE CORPORATION

**NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE**

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

**ADR POLICY**

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR -- i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

**ADR OPTIONS**

**1) CIVIL MEDIATION PROGRAM:** The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II, addresses this program specifically. Mediation is a non-binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute -- the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

**Assignment to Mediation, Cost and Timelines:** Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

**2) JUDICIAL ARBITRATION:** Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

**Assignment to Arbitration, Cost and Timelines:** Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

**3) SETTLEMENT CONFERENCES:** The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

**4) OTHER VOLUNTARY ADR:** Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

**ADDITIONAL ADR INFORMATION:** For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central		<b>FOR COURT USE ONLY</b>
PLAINTIFF(S): REALLY LIKEABLE PEOPLE INC et.al.		
DEFENDANT(S): LOWLIFE CORPORATION LTD et.al.		
SHORT TITLE: REALLY LIKEABLE PEOPLE INC VS. LOWLIFE CORPORATION LTD		
<b>STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)</b>		CASE NUMBER: 37-2007-00081582-CU-BC-CTL

Judge: William R. Nevitt, Jr.

Department: C-64

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- |   |   |
|---|---|
| <input type="checkbox"/> Court-Referred Mediation Program                   | <input type="checkbox"/> Court-Ordered Nonbinding Arbitration           |
| <input type="checkbox"/> Private Neutral Evaluation                         | <input type="checkbox"/> Court-Ordered Binding Arbitration (Stipulated) |
| <input type="checkbox"/> Private Mini-Trial                                 | <input type="checkbox"/> Private Reference to General Reference         |
| <input type="checkbox"/> Private Summary Jury Trial                         | <input type="checkbox"/> Private Reference to Judge                     |
| <input type="checkbox"/> Private Settlement Conference with Private Neutral | <input type="checkbox"/> Private Binding Arbitration                    |
| <input type="checkbox"/> Other (specify): _____                             |   |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral (Name) \_\_\_\_\_

Alternate: (mediation & arbitration only) \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Name of Plaintiff \_\_\_\_\_

Name of Defendant \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Name of Plaintiff's Attorney \_\_\_\_\_

Name of Defendant's Attorney \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 11/13/2007

JUDGE OF THE SUPERIOR COURT

ESDC CIV-359 (Rev 01-07)

STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION

Page 1 of 1





<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> Central 330 West Broadway San Diego, CA 92101	
<b>SHORT TITLE: REALLY LIKEABLE PEOPLE INC vs. LOWLIFE CORPORATION LTD</b>	
<b>CLERK'S CERTIFICATE OF SERVICE BY MAIL</b>	<b>CASE NUMBER:</b> <b>37-2007-00081582-CU-BC-CTL</b>

I certify that I am not a party to this cause. I certify that a true copy of the NOTICE OF CASE REASSIGNMENT was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 11/30/2007.

Clerk of the Court, by: J. Lizama  
J. Lizama, Deputy

J WARREN RISSIER  
355 S GRAND Avenue 44TH FLOOR  
LOS ANGELES, CA 90071





FILED  
CIVIL BUSINESS OFFICE 9  
CENTRAL DIVISION

2007 DEC 21 P 2: 22

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

Gerald L. McMahon, Esq. (SBN 036050)  
Monty A. McIntyre, Esq. (SBN 95796)  
G. Scott Williams, Esq. (SBN 226516)  
SELTZER CAPLAN McMAHON VITEK  
A Law Corporation  
750 B Street, 2100 Symphony Towers  
San Diego, California 92101-8177  
Telephone: (619) 685-3003  
Facsimile: (619) 685-3100

Attorneys for Defendants LOWLIFE CORPORATION LIMITED; EBTM plc; and DALE  
MASTERS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO  
(CENTRAL DIVISION)

REALLY LIKEABLE PEOPLE, INC., a	)	CASE NO. 37-2007-00081582-CU-BC-CTL
Delaware corporation, LOSERKIDS, INC., a	)	
California Corporation, MACBETH, INC., a	)	
California corporation, MACBETH OPTICS,	)	ANSWER TO COMPLAINT
LP, a California limited partnership, and	)	
REALLY LIKEABLE PEOPLE II, INC.	)	
(formerly ATTICUS CLOTHING, INC.), a	)	Dept: C-61
California corporation,	)	Judge: Hon. John S. Meyer
	)	Complaint Filed: November 13, 2007
Plaintiffs,	)	Trial Date: Not Set
	)	
vs.	)	
	)	
LOWLIFE CORPORATION, LTD, an	)	
English limited company, EVERYTHING	)	
BUT THE MUSIC, plc, an English	)	
corporation, DALE MASTERS, an	)	
individual, and DOES 1 through 25,	)	
inclusive,	)	
	)	
Defendants.	)	

Defendants LOWLIFE CORPORATION LIMITED (incorrectly sued as LOWLIFE  
CORPORATION, LTD); EBTM plc (improperly named in the Complaint as EVERYTHING  
BUT THE MUSIC, plc); and DALE MASTERS (collectively, "Defendants") answer the

1 Complaint of Plaintiffs REALLY LIKEABLE PEOPLE, INC., LOSERKIDS, INC.,  
2 MACBETH, INC., MACBETH OPTICS, LP, and REALLY LIKEABLE PEOPLE II, INC.  
3 (formerly ATTICUS CLOTHING, INC.) (collectively, "Plaintiffs"), as follows:

4 **GENERAL DENIAL**

5 Pursuant to California Code of Civil Procedure section 431.30(d), Defendants deny  
6 generally and specifically each and every allegation of Plaintiffs' Complaint, including all  
7 general allegations common to all causes of action, and each and every purported cause of  
8 action contained in the Complaint. Defendants also specifically deny that Plaintiffs have  
9 sustained any injury, damage, or loss in the sum alleged, or in any sum whatsoever, by reason  
10 of any act, omission or breach by Defendants, and deny that Plaintiffs are entitled to the relief  
11 requested in the Complaint or to any relief.

12 **AFFIRMATIVE DEFENSES**

13 In setting forth the following affirmative defenses, Defendants neither expressly nor  
14 impliedly assume the burden of disproving any element of any claim for which Plaintiffs bear  
15 the burden of production or burden of proof as a matter of law.

16 Defendants allege the following affirmative defenses upon information and belief:

17 **FIRST AFFIRMATIVE DEFENSE**

18 **(Mandatory Arbitration)**

19 1. The causes of action alleged in the Complaint are subject to mandatory  
20 arbitration pursuant to contracts among the parties.

21 **SECOND AFFIRMATIVE DEFENSE**

22 **(Failure to State Facts)**

23 2. Plaintiffs have failed to state facts sufficient to constitute any cause of action  
24 against Defendants.

25 **THIRD AFFIRMATIVE DEFENSE**

26 **(Litigation Privilege)**

27 3. The causes of action alleged in the Complaint are barred by the litigation  
28 privilege in California Civil Code section 47.

**FOURTH AFFIRMATIVE DEFENSE**

**(Mutual General Release)**

4. The causes of action alleged in the Complaint are barred by a written mutual general release.

**FIFTH AFFIRMATIVE DEFENSE**

**(Civil Code § 1542)**

5. The causes of action alleged in the Complaint are barred by California Civil Code section 1542.

**SIXTH AFFIRMATIVE DEFENSE**

**(Settlement Agreements)**

6. The causes of action alleged in the Complaint are barred because they arise from settlement communications that resulted in written agreements settling all known and unknown disputes between the settling parties.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Anti-SLAPP)**

7. The causes of action alleged in the Complaint are barred by California Code of Civil Procedure section 425.16.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Set Off and Recoupment)**

8. Defendants are entitled to credits, back charges, set off and recoupment in a sum to be shown according to proof at arbitration or trial.

**NINTH AFFIRMATIVE DEFENSE**

**(Laches)**

9. Plaintiffs have delayed for an unreasonable period of time in asserting their causes of action against Defendants, which delays have prejudiced Defendants. Therefore, Plaintiffs' causes of action against Defendants are barred under the doctrine of laches.

**TENTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

10. Plaintiffs have engaged in conduct and activity such that their claims for damages or any other relief against Defendants are barred by the doctrine of estoppel.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(In Pari Delicto)**

11. Any damages incurred by Plaintiffs were the direct and proximate result of Plaintiffs' own conduct or negligence; therefore, Plaintiffs' claims are barred under the doctrine of in pari delicto.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Failure of Condition)**

12. As to each contract alleged in the Complaint, Defendants' performance is excused due to a failure of conditions.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Fraud)**

13. Defendants allege that at all times Defendants acted without intent to deceive or defraud Plaintiffs; further, Plaintiffs' alleged cause of action which sounds in fraud fails to plead fraud with the requisite particularity.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Performance)**

14. Defendants allege that Plaintiffs have failed to perform all conditions, covenants and promises required to be performed in accordance with the terms and conditions of any written and oral contracts which are the subject of this lawsuit.

15. As to each cause of action stated in the Complaint, if Defendants are found to have failed to perform any covenant or condition pursuant to any purported agreement between Plaintiffs and Defendants, without admitting same, such failure was for the reason that Plaintiffs, by their acts and omissions, or those of their agents, prevented Defendants' performance and excused any and all future performance.

**FIFTEENTH AFFIRMATIVE DEFENSE****(Reasonable Care)**

16. As to each cause of action stated in the Complaint, Defendants allege that at all times and places set forth in the Complaint, and in each of its purported causes of action, Plaintiffs failed to exercise reasonable care on their own behalf and were otherwise legally responsible for their own loss. Therefore, any recovery by Plaintiffs should be barred, or, in the alternative, diminished in an amount in accordance with the principle of comparative liability.

**SIXTEENTH AFFIRMATIVE DEFENSE****(Mitigation of Damages)**

17. Plaintiffs have failed and refused, and continue to fail and refuse, to take reasonable or adequate steps to mitigate, alter, reduce or otherwise diminish the damages, if any, suffered. By reason of the foregoing, Plaintiffs are barred from any recovery for such damages, if any.

**SEVENTEENTH AFFIRMATIVE DEFENSE****(Unclean Hands)**

18. Defendants allege that by virtue of Plaintiffs' unlawful, immoral, careless, negligent and other wrongful conduct, Plaintiffs should be barred from recovering against Defendants by the equitable doctrine of unclean hands.

**EIGHTEENTH AFFIRMATIVE DEFENSE****(Injunction)**

19. Any claim for injunctive relief is barred because Plaintiffs' legal remedy is adequate; further Defendants are informed and believe and thereon allege that any right to injunctive relief is barred because the harm to Defendants should the injunction be granted outweighs any harm to the Plaintiffs should the injunction be denied.



**NINETEENTH AFFIRMATIVE DEFENSE**

**(Unjust Enrichment)**

20. Defendants are informed and believe, and upon such information and belief allege, that the Plaintiffs are barred from any recovery sought in the Complaint, and each purported cause of action alleged therein, under the doctrine of unjust enrichment.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Waiver)**

21. As to each cause of action stated in the Complaint, Defendants aver on information and belief that Plaintiffs have engaged in conduct and activities sufficient to constitute a waiver of any claim or cause of action which they may otherwise have had against Defendants.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Acts, Omissions, and Breaches by Others)**

22. Plaintiffs' damages, if any, were proximately caused solely by the intervening conduct, acts, omissions, or breaches of parties and persons other than Defendants.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Lack of Personal Jurisdiction)**

23. This Court lacks personal jurisdiction over one or more of the Defendants.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**(Reservation of Other Affirmative Defenses)**

24. Defendants do not have sufficient knowledge or information upon which to form a belief as to whether they may have additional affirmative defenses available. Defendants reserve the right to assert additional affirmative defenses in the event discovery or further analysis indicate that additional unknown or unstated affirmative defenses would be applicable.

WHEREFORE, Defendants pray for judgment:

1. That Plaintiffs take nothing by their Complaint;
2. That Defendants be awarded costs of suit;
3. For reasonable attorneys' fees incurred herein; and

4. For such other and further relief as the Court may deem just and proper.

Dated: December 21, 2007

SELTZER CAPLAN McMAHON VITEK  
A Law Corporation

By: 

Gerald L. McMahon, Esq.

Monty A. McIntyre, Esq.

G. Scott Williams, Esq.

Attorneys for Defendants LOWLIFE  
CORPORATION LIMITED; EBTM plc; and  
DALE MASTERS

Monty A. McIntyre, Esq. (SBN 95796) SELTZER CAPLAN MCMAHON VITEK 2100 Symphony Towers, 750 "B" Street San Diego, CA 92101	TELEPHONE NO. (619) 685-3003	COURT USE ONLY
Attorney For LOWLIFE CORPORATION, LTD; EBTM, plc; and DALE MASTERS		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO 330 West Broadway, San Diego, California 92101		
PLAINTIFFS: REALLY LIKEABLE PEOPLE, INC., a Delaware corporation, et al.		JUDGE: John S. Meyer DEPT: 61 DATE: TIME:
DEFENDANTS: LOWLIFE CORPORATION, LTD, an English limited company, et al.		
DECLARATION OF SERVICE BY MAIL		CASE NUMBER 37-2007-00081582-CU-BC-CTL

I, Anna Gateley-Stanton, declare that: I am over the age of 18 years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California, where the service occurs; and my business address is 2100 Symphony Towers, 750 B Street, San Diego, CA 92101.

On today's date, I caused to be served the following document(s): ANSWER TO COMPLAINT

By placing a true copy of each document in a separate envelope addressed to each addressee, respectively, as follows:

J. Warren Rissjer (SBN 197939)  
Aron P. Rofer (SBN 240021)  
Bingham McCutchen LLP  
355 S. Grand Avenue, 44th Floor  
Los Angeles, CA 90071  
Phone: (213) 680-6400; Fax: (213) 680-6499  
Attorneys for Plaintiffs Really Likeable People, Inc.,  
Loserkids, Inc., Macbeth, Inc., Macbeth Optics, LP, and  
Really Likeable People II, Inc. (formerly Atticus  
Clothing, Inc.)

I then sealed each envelope and, with postage thereon fully pre-paid,

☐ I deposited each in the United States Postal Service at San Diego, California.

☒ I placed each for deposit in the United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 21, 2007, at San Diego, California.

  
Anna Gateley-Stanton, PLS, CCLS

Monty A. McIntyre, Esq. (SBN 95796) SELTZER CAPLAN MCMAHON VITEK 2100 Symphony Towers, 750 "B" Street San Diego, CA 92101	TELEPHONE NO. (619) 685-3003	COURT USE ONLY  <b>FILED</b>  2007 DEC 21 PM 4:10  CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA  <i>Rm</i>
Attorney For LOWLIFE CORPORATION LIMITED; EBTM plc; and DALE MASTERS		
<b>UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA</b>		
PLAINTIFFS: REALLY LIKEABLE PEOPLE, INC., a Delaware corporation, et al.	JUDGE: BY <i>Rm</i> DEPUTY DEPT: DATE: TIME:	
DEFENDANTS: LOWLIFE CORPORATION, LTD, an English limited company, et al.		
<b>CERTIFICATE OF SERVICE BY MAIL</b>		CASE NUMBER <b>'07 CV 2405 L CAB</b>

I, Anna Gateley-Stanton, declare that: I am over the age of 18 years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California, where the service occurs; and my business address is 2100 Symphony Towers, 750 B Street, San Diego, CA 92101.

On today's date, I caused to be served the following document(s): NOTICE OF REMOVAL OF CIVIL ACTION BASED ON FEDERAL DIVERSITY JURISDICTION (28 U.S.C. §§ 1332, 1441(B)); and NOTICE OF PARTY WITH FINANCIAL INTEREST

By placing a true copy of each document in a separate envelope addressed to each addressee, respectively, as follows:

J. Warren Rissier (SBN 197939)

Aron P. Rofer (SBN 240021)

Bingham McCutchen LLP

355 S. Grand Avenue, 44th Floor

Los Angeles, CA 90071

Phone: (213) 680-6400; Fax: (213) 680-6499

Attorneys for Plaintiffs Really Likeable People, Inc., Loserkids, Inc., Macbeth, Inc., Macbeth Optics, LP, and Really Likeable People II, Inc. (formerly Atticus Clothing, Inc.)

I then sealed each envelope and, with postage thereon fully pre-paid,

☐ I deposited each in the United States Postal Service at San Diego, California.

☒ I placed each for deposit in the United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 21, 2007, at San Diego, California.

*Anna Gateley-Stanton*  
 Anna Gateley-Stanton, PLS, CCLS

JS 44  
(Rev. 07/89)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

REALLY LIKEABLE PEOPLE, INC., a Delaware corporation,  
LOSERKIDS, INC., a California Corporation, MACBETH, INC.,  
a California corporation, MACBETH OPTICS, LP, a California  
limited partnership, and REALLY LIKEABLE PEOPLE II, INC.  
(formerly ATTICUS CLOTHING, INC.), a California corporation

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Deleware  
(EXCEPT IN U.S. PLAINTIFF CASES)

**DEFENDANTS**

LOWLIFE CORPORATION, LTD, an English  
limited company, ~~EVERYTHING BUT THE~~  
MUSIC, plc, an English corporation, DALE  
MASTERS, an individual, and DOES 1 - 25

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT England, U.K.  
(IN U.S. PLAINTIFF CASES ONLY) DEPUTY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
TRACT OF LAND INVOLVED.

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

J. Warren Rissier (SBN 197939)  
Bingham McCutchen LLP  
355 S. Grand Avenue, 44th Floor  
Los Angeles, CA 90071  
(213) 680-6400

**ATTORNEYS (IF KNOWN)**

Monty A. McIntyre (SBN 95796)  
Seltzer Caplan McMahon Vitek  
750 "B" Street, Suite 2100  
San Diego, California 92101  
(619) 685-3003

**II. BASIS OF JURISDICTION** (PLACE AN 'X' IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PT                                    | DEF                                   |   | PT                         | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input checked="" type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 U.S.C. SECTION 1332, 1441(B)

**V. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 760 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates, etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motion to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions		

**VI. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding  
☒ 2 Removal from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ YES ☐ NO

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE

Docket Number

DATE

SIGNATURE OF ATTORNEY OF RECORD

December 21, 2007

Monty A. McIntyre

PAID \$350 12/21/07 BH RPT-A 145838

::ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 145838 - BH**  
**\* \* C O P Y \* \***  
**December 21, 2007**  
**16:12:22**

**Civ Fil Non-Pris**

USAO #: 07CV2405 CIVIL FILING  
Judge...: M. JAMES LORENZ  
Amount.: \$350.00 CK  
Check#: BC# 6978

**Total-> \$350.00**

FROM: CIVIL FILING  
REALLY LIKEABLE PEOPLE V.  
LOWLIFE CORP.